Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 85-767

In The
Supreme Court of the United States
October Term, 1986

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, ET AL,

Petitioners,

vs.

CREST STREET COMMUNITY COUNCIL, INC., ET AL,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 13, 1985
CERTIORARI GRANTED JANUARY 13, 1986

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* Designates page at which it appears in the Petition for Writ of Certiorari filed in November 13, 1985.

RELEVANT DOCKET ENTRIES

November 30, 1983	Plaintiffs filed Complaint in *Crest Street Community Council, Inc. v. North Carolina Department of Transportation, et al.*, No. C-83-1239-D, (M.D. N.C.).
December 22, 1983	Defendants filed Answer to Complaint.
June 22, 1984	Plaintiffs filed Amendment to Complaint (Allowed by June 20, 1984 Order).
July 3, 1984	Defendants filed Answer to Amendment to Complaint.
August 8, 1984	Defendants filed Motion to Dismiss the Action with supporting brief.
August 8, 1984	Plaintiffs filed Motion for Summary Judgment with supporting brief and affidavits.
August 30, 1984	Defendants filed Response to Plaintiffs' Motion for Summary Judgment with supporting brief, affidavits, and exhibits.
August 31, 1984	Plaintiffs filed Response to Defendants' Motion to Dismiss with supporting brief.
November 1, 1984	Hearing held on Plaintiffs' Motion for Summary Judgment and Defendants' Motion to Dismiss. The Court took the matter under consideration.
November 29, 1984	Court filed Memorandum Opinion and Order and Judgment was entered treating Defendants' Motion to Dismiss as Summary Judgment Motion, denying Plaintiffs' Motion for Summary Judgment, and dismissing the action.

December 24, 1984	Plaintiffs filed Notice of Appeal to the Fourth Circuit Court of Appeals from the judgment of November 29, 1984.
June 7, 1985	Argument before the Fourth Circuit Court of Appeals.
August 15, 1985	Opinion and judgment of Fourth Circuit Court of Appeals entered reversing the judgment of the district court and remanding the case for determition of a reasonable attorneys' fee.
September 9, 1985	Appellees' motion for a stay of mandate pending application to the Supreme Court of the United States for a writ of certiorari is denied by the Fourth Circuit Court of Appeals.
November 13, 1985	Petition for Writ of Certiorari to the Fourth Circuit Court of Appeals to review the August 15, 1985 judgment is filed in the Supreme Court of the United States.
January 13, 1986	Petition for a Writ of Certiorari is granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

File #C-83-1239-D

CREST STREET COMMUNITY COUNCIL, INC.,

Plaintiff,

V.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, NORTH CAROLINA BOARD OF TRANSPORTATION, and WILLIAM R. ROBERSON, as Secretary of the North Carolina Department of Transportation and Chairman of the North Carolina Board of Transportation,

Defendants.

COMPLAINT

(Filed 30 November 1983)

INTRODUCTION

1. This is an action to recover plaintiff's attorneys' fees under the Civil Rights Attorneys Fees Act, 42 U.S.C. § 1988, for legal representation which enforced plaintiff's civil rights in connection with the defendants' planning and construction of the Durham East/West Expressway.

PARTIES

2. The Crest Street Community Council, Inc. is a not for profit corporation organized under the laws of the State of North Carolina and comprised of the members of the Crest Street Community of Durham, North Carolina. The Corporation's office is located in Durham, North Carolina, and all of its members reside in Durham, North Carolina.

3. The North Carolina Department of Transportation is an agency of the State of North Carolina and is responsible for determining the selection, location and design of major highways in North Carolina, including the Durham East/West Expressway, and carrying out the construction of such highways.

4. The North Carolina Board of Transportation is the governing body of the North Carolina Department of Transportation.

5. William R. Roberson is Secretary of the North Carolina Department of Transportation and is Chairman of the North Carolina Board of Transportation.

JURISDICTION

6. The Court has jurisdiction of the parties and subject matter of this action pursuant to 42 U.S.C. § 1331, § 1337 and §§ 1343(a) (3) and (4).

FACTS

7. In late 1976, the North Carolina Department of Transportation began proceeding with administrative actions to initiate construction of the Durham East/West Expressway through the Crest Street Community, a stable, cohesive, black neighborhood in western Durham. North Carolina.

8. In the Crest Street Community, strong family ties among households and stability in residency of the households sustain a close, supportive community. An anthropological study of the community found that over half of the households in the community have relatives in other households and a majority of the residents have lived in

the community for more than 20 years and many have lived there all their lives. The community is centered around the New Bethel Baptist Church, which recently celebrated its centennial anniversary.

9. The expressway location and design proposed by the North Carolina Department of Transportation would have destroyed the Crest Street Community. The expressway route was planned to go through the middle of the Crest Street Community and a major interchange was proposed to be placed on the top of the Crest Street Community. The combined effect of the regular right-of-way and this interchange would have been to displace more than half of the community, including the community church, and to leave the remaining residents isolated in undesirable pockets which would be subject to intense commercialization pressure. Furthermore, defendants' plan to raze the Crest Street Community discouraged private and public investment in the neighborhood and was thus causing the neighborhood to deteriorate and to be denied public services.

10. In March 1977, plaintiff retained the North Central Legal Assistance Program as its attorneys to represent it concerning the proposed extension of the expressway through the Crest Street Community.

11. During 1977 and 1978, plaintiff communicated to defendants its opposition to construction of the expressway through the Crest Street Community and requested that the defendants stop their efforts to extend the expressway through the plaintiff's community. Plaintiff also requested that the defendants provide current traffic data to plaintiff so that plaintiff's traffic engineering consultant

could prepare alternatives to the expressway. Notwithstanding these requests, defendants maintained that further data was not required; defendants proceeded with recommending to local governments that the expressway should be extended; and defendants proceeded with issuing a revised draft environmental impact statement for construction of the expressway through the Crest Street Community.

12. The Durham East/West Expressway was and is a federal aid highway project with federal funds providing approximately seventy-five percent (75%) of the costs of the project.

13. In September 1978 plaintiff, under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and pursuant to the United States Department of Transportation (USDOT) Title VI procedures set out in 49 CFR 21, filed an administrative complaint with the United States Department of Transportation, stating that plaintiff's civil rights were being violated by the defendants' plans and efforts to construct an expressway through the Crest Street Community.

14. The USDOT Office of Civil Rights proceeded to investigate this administrative complaint. A field investigator was sent to the Raleigh-Durham area and spent a week meeting with plaintiff and defendants and investigating the complaint. Subsequent to this field investigation, the Office of Civil Rights requested various information and materials from the plaintiff and defendants. In February 1980, the USDOT Office of Civil Rights issued a preliminary finding that construction of the East/

West Expressway as proposed by defendants would violate plaintiff's rights under Title VI of the 1964 Civil Rights Act. The Office of Civil Rights also urged plaintiff and defendants to meet and seek conciliation of the issue before further administrative proceedings took place.

15. Subsequent to the issuance of the finding in February 1980 by the Office of Civil Rights, plaintiff and defendants met extensively and explored numerous alternatives to resolve the controversy between them. In February of 1982, plaintiff and defendants reached agreement on a preliminary concept to modify the expressway design and to provide plaintiff's members with substantial compensating housing and community programs, above and beyond normal relocation benefits, to mitigate the adverse impact of the expressway construction on the Crest Street Community. The effect of this agreement was to preserve and strengthen the Crest Street Community. In this agreement, plaintiff specifically asserted and reserved its rights to receive attorneys' fees.

16. In May 1982, defendant issued a final environmental impact statement for construction of the East/West Expressway and subsequently moved this Court to dissolve its injunction in *ECOS, et al. v. Brinegar, et al.*, (C-352-D-72), prohibiting further construction of the expressway. (The *ECOS* case was filed in 1972 by an environmental group and several individuals seeking an injunction to stop construction of a section of the expressway then under construction. This injunction was denied but defendants were enjoined from constructing any further sections of the expressway until specified statutes and regulations were complied with in full.) Plaintiff moved

for intervention in the *ECOS* case asserting, *inter alia,* that the expressway construction would violate its members' rights under Title VI of the Civil Rights Act of 1964. While this motion was pending, plaintiff and defendants reached final agreement on a settlement and mitigation plan and agreed with the other parties in the ECOS case to a consent judgment which dismissed the ECOS action. In both the final settlement and the consent judgment, plaintiff again specifically reserved its right to recovery attorneys' fees.

17. Under the terms of plaintiff's settlement with defendants, the plaintiff's members will receive substantial individual benefits beyond normal relocation benefits and plaintiff's community will be preserved and strengthened. The agreement includes the following provisions. First, defendants have modified the expressway design to reduce the number of households in the community that will be displaced and to prevent destruction of the community church. Also, defendants released the City of Durham from having to pay several million dollars toward the expressway right-of-way in exchange for the City's agreeing to assist defendants with construction of a new community for plaintiff's members. The new community will be built on the portion of the community not taken by the expressway and on several adjacent parcels of land. In plaintiff's present community the streets were narrow and were stip-paved or dirt and there were very few recreation facilities. In the new community full paved, curbed and guttered streets and sidewalks will be provided as well as substantial recreation facilities, including a baseball field, lighted basketball courts and a community center.

Regarding housing, community homeowners will be offered newly constructed homes in exchange for their current homes and community residents who were tenants will be offered low-cost home ownership or long-term rent subsidized housing in the new community. This beneficial settlement revitalizes plaintiff's community, mitigates plaintiff's members' hardships and is a direct result of the legal proceedings and actions for which plaintiff now seeks attorney's fees.

18. Plaintiff has presented defendant with a detailed statement of its expenses and attorneys' hours and defendant has refused to pay any expenses or attorneys' fees. A copy of these expenses and hours are attached hereto as Exhibit A.

CLAIM FOR RELIEF

19. Plaintiff's members secured their rights under Title VI of the Civil Rights Act of 1964 in connection with defendants' planning and construction of the Durham East/West Expressway and plaintiff is entitled to recover expenses and reasonable attorneys' fees for legal representation which vindicated these rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief as follows:

A. That the defendants be ordered to pay plaintiff its expenses and reasonable attorneys' fees;

B. That the defendants be ordered to pay the costs of this action, including plaintiff's expenses and attorneys' fees for prosecuting this action; and

C. That the Court grant plaintiff such other relief as the Court finds to be just and proper.

This the 28th day of November, 1983.

NORTH CENTRAL LEGAL ASSISTANCE PROGRAM
Durham, North Carolina

Attorneys for Plaintiff

s/ By MICHAEL D. CALHOUN

s/ ALICE A. RATLIFF

STATEMENT OF HOURS AND EXPENSES

HOURS:

Attorney	1020.75
Staff Associate	90.00
Paralegal	104.00
Law Clerk	46.50

EXPENSES:

Long distant telephone calls	$327.50
Out of town travel	579.17
TOTAL	$906.67

EXPERTS:

Planning consultant:

Fee — $13,031.40 (249.5 hours)

Travel Expenses — 1,260.23

TOTAL $14,291.63

YEAR 1977

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
March 17	Ratliff	1	Conference planning
	Ray	1	
March 23	Ratliff	2	Planning and legal research
March 24	Ratliff	1	Legal research
March 29	Ratliff	1	Planning conference
	Calhoun	1	
	Ray	1	
April 7	Ratliff	1	Crest Street planning
April 7	Ratliff	2	Planning meeting with clients
April 12	Ratliff	2	Conference with clients
	Ray	2	
April 20	Ratliff	1	Investigation of Expressway plans
May 11	Ratliff	2	Conference with clients
May 22	Ray	½	Telephone conference with City engineering staff regarding Expressway plans
June 6	Ratliff	1¾	Monitoring NC DOT presentation to Durham City Council regarding interchange design
June 9	Ray	1½	Meeting with clients
	Ratliff	1½	
	Calhoun	1½	
June 27	Ratliff	2	Meeting with clients

YEAR 1977

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
June 30	Calhoun	½	Telephone conference with NC DOT
June 30	Ray	1½	Planning conference
	Calhoun	1½	
	Ratliff	1½	
July 5	Ratliff	2	Meeting with clients
July 7	Calhoun	6	Review of & analysis of NC DOT Expressway file
July 7	Ratliff	6	Review of NC DOT materials
July 19	Calhoun	8	Review of NC DOT materials
July 20	Calhoun	7	Review of NC DOT materials
July 20	Ratliff	1	Planning conference
	Calhoun	1	
July 21	Ratliff	1	Conference with anthropologist regarding Crest Street survey
July 26	Ratliff	8	Review of DOT file
July 28	Ratliff	2	Meeting with anthropologist regarding Crest Street survey
August 1	Ratliff	1½	Planning
August 1	Ratliff	1½	Meeting with clients
	Calhoun	1½	
August 4	Ratliff	2	Meeting with anthropologist regarding community survey

YEAR 1977

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
August 9	Ratliff	1	Meeting with anthropologist regarding community survey
August 15	Calhoun	1½	Meeting with clients
September 12	Ratliff	1½	Steering Committee meeting
September 19	Ratliff	1½	Steering Committee meeting
September 28	Ratliff	2	Meeting with anthropologist regarding community survey
	Calhoun	2	
September 29	Ratliff	2	Planning
October 4	Ratliff	2	Meeting with clients
October 18	Ratliff	2	Meeting with clients
October 27	Ratliff	6	Legal research regarding Relocation Assistance Act
October 28	Ratliff	2	Conference
	Calhoun	2	
November 3	Ratliff	8	Research regarding Civil Rights Act of 1964
November 11	Ratliff	2	Planning conference
	Calhoun	2	
November 14	Ratliff	1½	Meeting with clients
November 16	Ratliff	½	Correspondence with housing consultant

YEAR 1977

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
November 17	Ratliff	1½	Meeting with anthropologist regarding community survey
	Calhoun	1½	
November 18	Ratliff	1	Planning meeting
	Fox	1	
	Calhoun	1	
	Dickson (law student)	1	
November 18	Ratliff	2	Meeting with anthropologist regarding community survey
	Calhoun	2	
November 18	Calhoun	4½	Investigation regarding traffic data and correspondence with traffic engineering consultant
November 29	Ratliff	2	Meeting with clients
December 5	Calhoun	¼	Correspondence with traffic engineering consultant
December 8	Ratliff	3	Meeting with clients
December 12	Ratliff	1½	Monitoring NC DOT presentation to City Council
December 15	Ratliff	1	Monitoring NC DOT presentation to Durham City Council Committee of the Whole
December 18	Ratliff	¾	Planning Conference
	Calhoun	¾	
December 20	Ratliff	¼	Correspondence to NC DOT

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
January 5	Calhoun	8	Legal research NEPA and § 4-F
January 5	Ratliff	¼	Review of correspondence from NC DOT
January 6	Calhoun	7	Legal research NEPA and § 4-F
January 10	Calhoun	3	NC DOT hearing at New Bethel Baptist Church on Expressway
January 12	Calhoun	2	Monitoring NC DOT hearing on Expressway at McMannan Methodist Church
January 13	Ratliff	¼	Correspondence to NC DOT
January 13	Calhoun	7	Meeting and survey of Expressway site with traffic engineering consultant
January 20	Calhoun	¼	Correspondence to traffic engineering consultant
January 23	Ratliff	¼	Phone call with Richard Davis, NC DOT
January 26	Ratliff	1½	Meeting with anthropologist regarding community survey and study
January 27	Calhoun	½	Communication with traffic consultant
January 30	Ratliff	¾	Review of materials correspondence from NC DOT

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
January 30	Ratliff	1½	Meeting with clients
February 6	Ratliff	4	Meeting with anthropologist regarding community survey and study
	Calhoun	4	
February 9	Calhoun	¼	Call to NC DOT
February 14	Calhoun	½	Correspondence with traffic engineering consultant
February 14	Ratliff	1½	Meeting with anthropologist regarding community survey and study
February 15	Ratliff	2	Meeting with anthropologist regarding community survey and study
February 21	Calhoun	¼	Communication with traffic engineering consultant
February 23	Calhoun	1¾	Legal research and correspondence to NC DOT
February 24	Ratliff	1	Meeting with clients
February 27	Ratliff	2	Meeting with clients
	Calhoun	2	
February 28	Ratliff	3	Planning meeting
	Calhoun	3	
March 1	Calhoun	2½	Investigation of work force and shift time of West Durham employers
March 2	Calhoun	¾	Investigation of availability of relocation

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
March 2	Ratliff	2	Meeting with anthropologist regarding community survey and study
March 9	Ratliff	¼	Review of letter from NC DOT
March 21	Ratliff	2	Research regarding availability of federal housing assistance
March 24	Calhoun	1¼	Monitoring NC DOT presentation to Durham City Council
March 29	Ratliff	1	Meeting with clients
March 30	Ratliff	1	Meeting with clients
March 30	Ratliff	1½	Meeting with clients
April 5	Ratliff	1	Planning meeting
	Calhoun	1	
April 6	Ratliff	2	Meeting investigating feasibility of relocating community
April 12	Ratliff	1½	Meeting with anthropologist regarding community survey and study
	Calhoun	1½	
April 13	Ratliff	1½	Meeting with clients
	Calhoun	1½	
April 19	Ratliff	8	Planning meeting; legal and factual research
	Calhoun	8	
April 24	Ratliff	1½	Meeting with clients
April 27	Ratliff	1	Monitoring NC DOT presentation to City Council

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
May 1	Calhoun	1½	Monitoring NC DOT presentation to City Council
May 1	Calhoun	¾	Correspondence with traffic engineering consultant
May 5	Calhoun	2½	Meeting with clients
	Ratliff	2½	
May 8	Calhoun	¼	Call to NC DOT
May 11	Ratliff	1	Meeting with anthropologist regarding community survey and study
May 11	Ratliff	2	Crest Street Steering Com-
	Calhoun	2	mittee meeting
May 31	Ratliff	¼	Phone conference with traffic engineering consultant
June 3	Ratliff	3	Meeting with clients
	Calhoun	3	
June 14	Ratliff	1½	Meeting with clients
June 17	Ratliff	1	Meeting with clients
June 20	Calhoun	1¾	Review of EPA document regarding air quality requirements
June 20	Calhoun	¾	Phone conference with EPA officials regarding air quality requirements

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
June 21	Calhoun	1¾	NC DOT Highway Improvement Plan hearing
June 22	Ratliff	2	Meeting with clients
	Calhoun	2	
July 6	Ratliff	2	Crest Street Steering Com-
	Calhoun	2	mittee meeting
July 12	Ratliff	1	Investigation of traffic data
July 13	Ratliff	1½	Meeting with clients
July 14	Ratliff	2	Investigation of feasibility of relocating community
July 20	Calhoun	1½	Meeting with clients
August 1	Calhoun	¼	Phone conference with traffic engineering consultant
August 1	Calhoun	¼	Call to NC DOT
August 2	Calhoun	1¾	Meeting with clients
August 4	Ratliff	1	Meeting with anthropologist regarding community survey and study
August 4	Calhoun	2	Preparation of resource materials and consultation with traffic consultant
August 7	Calhoun	¼	Call to NC DOT
August 14	Calhoun	4	Meeting with NC DOT planners
August 15	Calhoun	3	Review of materials in NC DOT file
August 16	Calhoun	3½	Meeting with NC DOT Planners

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
August 17	Ratliff	1	Meeting with clients
August 18	Calhoun	¼	Called to NC DOT planners
August 20	Ratliff	¾	Meeting with clients
August 23	Calhoun	¾	Investigation of expressway alternatives
August 23	Calhoun	¼	Correspondence with NC DOT
August 25	Calhoun	¼	Call to traffic engineering consultant
August 28	Calhoun	1½	Meeting with clients
August 30	Calhoun	3½	Preparation of resource materials and correspondence with traffic engineering consultant
August 31	Calhoun	¼	Phone conference with NC Federal Highway Administrator
September 1	Calhoun	3	Monitor NC DOT Planning Board Meeting
September 5	Ratliff	1	Legal and factual research
September 6	Ratliff	2	Conference with clients
September 7	Calhoun	¼	Correspondence with Federal Highway Administrator
September 7	Ratliff	3½	Conference with clients and meeting with NC Federal Highway Administrator
	Calhoun	3½	
September 7	Calhoun	½	Correspondence with traffic engineering consultant

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
September 7	Calhoun	¼	Correspondence with Secretary, U.S. Department of Transportation
September 7	Calhoun	¼	Correspondence with UMTA Administrator
September 7	Calhoun	¼	Correspondence with Region IV Federal Highway Administrator
September 8	Calhoun	3	Monitoring NC DOT meeting
September 11	Calhoun	¼	Review of correspondence from NC DOT
September 11	Calhoun	½	Communication with traffic engineering consultant
September 12	Calhoun	¼	Call from NC DOT planner
September 14	Calhoun	¼	Review of correspondence from Federal Highway Administrator
September 14	Ratliff	1½	Conference with clients
September 15	Calhoun	¼	Call to NC DOT planner
September 18	Calhoun	1¼	Correspondence with Office of Civil Rights
September 18	Calhoun	¼	Call to NC DOT planner
September 19	Calhoun	½	Review of correspondence from NC DOT
September 21	Calhoun	¼	Call to NC Federal Highway Administrator
September 21	Calhoun	¼	Call to NC DOT

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
September 21	Calhoun	4½	Legal research regarding NC DOT Action Plan
September 23	Calhoun	¼	Correspondence with NC DOT
September 26	Calhoun	½	Review of correspondence from Federal Highway Administration
September 27	Calhoun	½	Correspondence with NC DOT
September 28	Calhoun	2½	Consultation with traffic engineering consultant
October 1	Ratliff	¼	Phone consultation with planning consultant
October 2	Calhoun	¼	Phone conference with traffic engineering consultant
October 3	Calhoun	1¼	Research and correspondence with Federal Highway Administrator
October 9	Calhoun	3½	Meeting with NC DOT planners
October 10	Calhoun	3	Monitor NC DOT Planning Board Meeting
October 12	Calhoun	¼	Review of correspondence from Federal Highway Administration
October 13	Calhoun	½	Review of NC DOT correspondence and materials
October 19	Calhoun	¼	Correspondence with traffic engineering consultant

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
October 19	Calhoun	½	Correspondence with NC DOT
October 19	Calhoun	¼	Call to NC DOT Planners
October 19	Calhoun	4	Compilation of materials for civil rights investigator and letter to civil rights investigator
October 20	Calhoun	¼	Call to NC DOT
October 23	Calhoun	8	Conference and orientation with William Davis, US DOT Civil Rights Investigator
October 24	Calhoun	1	Meeting with Lt. Pendergrass of Durham Police and US DOT investigator
October 24	Calhoun	7	Site investigation with William Davis
October 24	Ratliff Calhoun	1½ 1½	Meeting with William Davis and local representatives
October 24	Ratliff Calhoun	1½ 1½	Meeting with William Davis and anthropologist consultant
October 25	Calhoun	2½	Meeting with DOT officials and US DOT investigator
October 25	Calhoun	4	Conference with US DOT investigator
October 26	Calhoun Ratliff	2½ 2½	Meeting with US DOT investigator and clients

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
October 26	Calhoun	1½	Meeting with Durham
	Ratliff	1½	Housing Authority Director and US DOT Civil Rights Investigator
October 26	Calhoun	1¾	Meeting with City planning officials and US DOT investigator
October 27	Calhoun	2	Summary conference with William Davis
October 30	Calhoun	7	Review and analysis of NC DOT Expressway materials
October 31	Calhoun	¼	Call to Triangle J Council of Governments regarding Expressway A-95 Review
October 31	Calhoun	8	Review and analysis of NC DOT Expressway materials
November 1	Calhoun	8	Review and analysis of NC DOT Expressway materials
November 2	Calhoun	8	Review and analysis of NC DOT Expressway materials
November 3	Calhoun	6	Review and analysis of NC DOT Expressway materials
November 3	Calhoun	½	Correspondence with traffic engineering consultant

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
November 6	Calhoun	¼	Phone call to Office of Civil Rights
November 9	Calhoun	¼	Phone call to US DOT Office of Civil Rights
November 10	Calhoun	¼	Correspondence with NC DOT
November 10	Calhoun	¼	Correspondence with NC DOT Civil Rights Coordinator
November 25	Calhoun	1	Correspondence with traffic engineering consultant
November 27	Calhoun	1	Review of NC DOT correspondence
November 29	Calhoun	½	Review of correspondence and materials from NC DOT
November 30	Calhoun	4½	Monitoring NC DOT
	Ratliff	4½	Expressway hearing
December 4	Calhoun	¼	Phone conference with traffic engineering consultant
December 10	Ratliff	1¾	Investigation of feasibility of relocating community
December 11	Calhoun	4	Research and preparation of memo regarding transferability of expressway funds to expressway alternatives

YEAR 1978

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
December 12	Calhoun	¼	Phone call from Office of Civil Rights
December 12	Calhoun	¼	Phone call from Office of Civil Rights
December 13	Calhoun	¼	Phone call to Office of Civil Rights
December 22	Calhoun	2	Compilation of materials and correspondence to civil rights investigator
December 27	Calhoun	8	Preparation of Comments on revised draft EIS
December 28	Calhoun	8	Preparation of Comments on revised draft EIS
December 29	Calhoun	7	Preparation of Comments on revised draft EIS

YEAR 1979

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
January 16	Calhoun	¼	Review of correspondence from NC DOT
January 16	Ratliff	1	Meeting with anthropologist regarding community study
January 18	Ratliff Calhoun	2 2	Conference with clients
January 19	Ratliff	1	Conference with clients
January 19	Calhoun	1	TAC meeting

YEAR 1979

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
January 31	Ratliff	1	Conference with clients
February 1	Calhoun	1½	Monitor NC DOT presentation to City Council
February 1	Calhoun Ratliff	1½ 1½	Conference with clients
February 2	Calhoun	3	Compilation of census data and correspondence with U.S. Civil Rights Office
February 8	Ratliff	2	Conference with clients
February 12	Calhoun	1¾	Research and correspondence with NC DOT
February 16	Calhoun	1	Correspondence with U.S. Civil Rights Office
February 28	Ratliff	1	Conference with clients
March 6	Calhoun	2½	Monitor NC DOT hearing
March 12	Calhoun	¼	Correspondence with NC DOT
March 22	Calhoun Ratliff	1¾ 1¾	Conference with clients
March 27	Ratliff	3	Meeting with housing consultant
March 28	Calhoun	¼	Review of NC DOT correspondence
March 28	Calhoun	¼	Correspondence with NC DOT
March 30	Calhoun	¼	Call to US DOT Office of Civil Rights

YEAR 1979

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
March 30	Calhoun	¼	Call from NC DOT Administrator
April 5	Calhoun	¾	Correspondence with traffic engineering consultant
April 19	Calhoun	¼	Correspondence with NC DOT
April 20	Calhoun	2	Meeting with NC DOT Secretary regarding Expressway
April 23	Calhoun	¾	Correspondence with Office of Civil Rights
April 23	Calhoun	¼	Review of NC DOT correspondence and materials
April 27	Ratliff	¾	Conference with clients
May 3	Ratliff	2¼	Crest Street meeting
	Calhoun	2¼	
May 3	Calhoun	½	Correspondence with Tom Bradshaw
May 10	Calhoun	¼	Correspondence with traffic engineering consultant
May 14	Calhoun	1½	Compilation of materials and correspondence with Federal Highway Administrator
May 19	Ratliff	2	Conference with client
	Calhoun	2	

YEAR 1979

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
May 21	Calhoun	¼	Call to Office of Civil Rights
May 22	Calhoun	¼	Consultation with traffic engineering consultant
May 23	Calhoun	¼	Call to US DOT Office of Civil Rights
May 24	Calhoun	¼	Review of correspondence from NC DOT
May 25	Calhoun	4½	Review of University of Virginia Park and Ride systems materials
May 29	Calhoun	¼	Review of correspondence from Federal Highway Administrator
May 30	Calhoun	¼	Call to NC DOT administrator
May 30	Calhoun	2½	Monitor NC DOT Hearing
	Ratliff	2½	
June 1	Calhoun	2½	Correspondence with US DOT Office of Civil Rights
June 8	Calhoun	¼	Correspondence with NC DOT
June 15	Calhoun	¼	Call to NC DOT administrator
June 20	Calhoun	¼	Correspondence with NC DOT
June 26	Calhoun	½	Review of correspondence and materials from NC DOT

YEAR 1979

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
June 28	Ratliff	2	Meeting with clients
	Calhoun	2	
June 29	Calhoun	¼	Call to NC DOT administrator
July 2	Calhoun	1¼	Compilation of materials and correspondence with traffic engineering consultant
July 3	Calhoun	¼	Review of NC DOT correspondence
July 5	Calhoun	½	Correspondence with US DOT Office of Civil Rights
July 5	Calhoun	½	Correspondence to NC DOT
July 9	Calhoun	¼	Phone consultation with traffic engineering consultant
July 9	Calhoun	¼	Call to NC DOT
July 10	Calhoun	¼	Call from US DOT Office of Civil Rights
July 11	Calhoun	¼	Call to US DOT Office of Civil Rights
July 12	Ratliff	2	Conference with clients
	Calhoun	2	
July 15	Calhoun	1	Review of traffic engineering consultant's analysis
August 1	Calhoun	¼	Review of NC DOT correspondence and materials

YEAR 1979

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
August 3	Ratliff	¼	Phone consultation with housing consultant
August 5	Ratliff	1½	Conference with clients
	Calhoun	1½	
August 10	Calhoun	¼	Review of correspondence from NC DOT
August 13	Calhoun	3	NC DOT Expressway meeting
August 27	Calhoun	¼	Review of correspondence from NC DOT
August 31	Calhoun	¼	Call from Office of Civil Rights
August 31	Calhoun	1¾	Compilation of documents and correspondence to Office of Civil Rights
September 6	Calhoun	¼	Call to NC DOT planner
September 7	Calhoun	¼	Phone consultation with traffic engineering consultant
September 20	Calhoun	1½	Compilation of documents and correspondence with Office of Civil Rights
September 21	Ratliff	¾	Conference with clients
October 5	Calhoun	½	Correspondence and documents compilation to Office of Civil Rights
October 8	Ratliff	½	Correspondence with housing consultant

YEAR 1979

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
October 23	Calhoun	¾	Research and correspondence with NC DOT
October 24	Calhoun	¼	Phone call to NC DOT Civil Rights Coordinator
October 29	Calhoun	½	Correspondence with Office of Civil Rights
November 5	Ratliff	¼	Phone consultation with planning consultant
November 14	Ratliff	4	Orientation and meeting with housing consultant
	Calhoun	4	
November 15	Ratliff	4	Conference with clients and housing consultant
November 15	Calhoun	¼	Correspondence with NC DOT
November 16	Ratliff	6	Investigation with housing consultant
November 19	Calhoun	½	Correspondence with Office of Civil Rights
November 19	Calhoun	¼	Correspondence with Office of Civil Rights
November 19	Ratliff	¼	Phone call from Office of Civil Rights
November 30	Calhoun	¾	Review of correspondence and materials from NC DOT
December 1	Calhoun	½	Correspondence with Civil Rights Office
December 3	Ratliff	1	Planning for conference with Office of Civil Rights

YEAR 1979

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
December 4	Ratliff	5½	Conference with clients
	Calhoun	5½	
December 4	Calhoun	3	Compilation of documents and correspondence with Office of Civil Rights
December 5	Ratliff	11	Meeting with community members and Office of Civil Rights in Washington, Conference with clients
	Calhoun	11	
December 14	Calhoun	2½	Compilation of materials and correspondence of traffic engineering consultant
December 17	Ratliff	1	Review of letter from housing consultant
December 21	Calhoun	1¼	Correspondence with NC DOT
December 21	Calhoun	½	Phone consultation with traffic engineering consultant
December 28	Ratliff	2	Research and correspondence with housing consultant

YEAR 1980

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
January 11	Calhoun	1½	Research regarding Title VI record-keeping requirements for NC DOT and Federal Highway
January 11	Calhoun	¼	FOIA request to Federal Highway Administration in Washington
January 11	Calhoun	¼	Freedom of Information Act request to Federal Highway Administration
January 18	Calhoun	¼	Call from US DOT Office of Civil Rights
January 18	Calhoun	¼	Correspondence with NC DOT
January 18	Calhoun	¼	Correspondence with NC DOT
January 21	Ratliff	2	Monitoring NC DOT presentation
January 23	Calhoun	1	FOIA request to Federal Highway Administration, NC Division
January 23	Calhoun	½	Correspondence with NC DOT
January 27	Ratliff	1½	Conference with clients
February 7	Calhoun Ratliff	1½ 1½	Planning meeting
February 11	Ratliff	8	Legal research

YEAR 1980

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
February 13	Calhoun	1½	Review of NC Federal Highway FOIA materials and follow-up letter to NC Federal Highway
February 18	Calhoun	¼	Review of correspondence from NC DOT
February 21	Calhoun	¼	Phone conversation from NC Federal Highway regarding FOIA request
March 21	Ratliff	2	Conference with clients
March 23	Ratliff	1	Conference with housing consultant
March 24	Ratliff	1	Correspondence to and memo for housing consultant
March 24	Calhoun	¼	Call from US DOT Office of Civil Rights
March 25	Calhoun	¼	Call from US DOT Office of Civil Rights
March 27	Ratliff	1½	Conference with clients
March 27	Calhoun	¼	Phone conversation with NC Federal Highway
April 2	Calhoun	¼	Call from Office of Civil Rights
April 2	Ratliff	8	Legal research
April 7	Calhoun	1	Review of NC Federal FOIA supplemental materials

YEAR 1980

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
April 8	Calhoun	½	Correspondence with traffic engineering consultant
April 12	Calhoun Ratliff	2 2	Conference with housing consultant
April 13	Ratliff	4	Research and planning with housing consultants
April 14	Ratliff	4	Planning and research with housing consultants
April 14	Calhoun	¼	Phone consultation with traffic engineering consultant
April 20	Calhoun	1¼	Legal research regarding civil rights data requirements
April 29	Ratliff	¼	Phone consultation with planning consultant
May 6	Ratliff	2	Investigation of housing alternatives with consultant
May 7	Ratliff	2	Conference with clients
May 9	Ratliff Calhoun	2½ 2½	Conference with clients and drafting response to Secretary Bradshaw's proposal
June 11	Ratliff Calhoun	3 3	Preparation of Memo
June 11	Ratliff	2½	Steering Committee meeting

YEAR 1980

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
June 11	Calhoun	2½	Steering Committee meeting
June 16	Ratliff	3	Conference with housing consultant
June 18	Calhoun	½	FOIA request to Federal Highway in Washington
June 18	Ratliff	1	Conference with clients
June 19	Ratliff	6	Meeting with NC DOT regarding community survey and boundaries
July 9	Calhoun	¼	Follow-up call to Federal Highway in D.C. regarding FOIA request
July 11	Ratliff	1½	Correspondence with NC DOT
July 21	Ratliff	1	Meeting with Secretary Bradshaw
July 23	Calhoun	¼	Phone call from NC DOT planner
August 6	Calhoun Ratliff	4 4	Steering Committee meeting
August 6	Calhoun	1	Conference with clients
August 10	Ratliff	1	Conference with clients
August 13	Ratliff	2	Planning
August 22	Swanner	3	Preparation of census maps
September 2	Ratliff	1½	Conference with clients
September 2	Calhoun	1	Meeting with NC DOT

YEAR 1980

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
September 4	Ratliff	2½	Conference with housing consultants
September 4	Calhoun	¼	Phone call to US DOT
September 9	Calhoun	1¾	Task Force meeting
September 11	Ratliff	2	Conference with housing consultants
September 12	Swanner	2	Factual Research
September 15	Calhoun	¼	Call from NC DOT planner
September 15	Swanner	8	Preparation of census maps
September 16	Swanner	8	Preparation of census maps
September 17	Swanner	8	Preparation of census maps
September 18	Swanner	8	Preparation of census maps
September 19	Swanner	8	Preparation of census maps
September 25	Ratliff	2	Conference with housing consultants
October 1	Calhoun	¼	Call from NC DOT planner
October 2	Ratliff	1½	Conference with housing consultants
October 9	Swanner	8	Preparation of census maps
October 16	Ratliff	2	Conference with housing consultants
October 23	Ratliff	1½	Conference with housing consultants

YEAR 1980

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
October 28	Ratliff	1	Conference with housing consultants
October 29	Calhoun	4	Steering Committee meeting and tour of community
	Ratliff	4	
October 30	Ratliff	2	Conference with housing consultants
November 4	Calhoun	3	Factual research
November 5	Ratliff	2½	NC DOT Task Force meeting
November 6	Ratliff	1½	Conference with housing consultant
November 10	Calhoun	¼	Phone consultation with traffic engineering consultant
November 13	Ratliff	2½	Conference with housing consultants
November 14	Ratliff	2	Meeting with US DOT Office of Civil Rights Representative
November 14	Swanner	3	Factual research
November 15	Ratliff	4	Meeting with US DOT Office of Civil Rights representative
	Calhoun	4	
November 16	Ratliff	4	Meeting with US DOT Office of Civil Rights representative
	Calhoun	4	
November 17	Swanner	8	Preparation of census maps

YEAR 1980

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
November 18	Ratliff	2	Conference with clients
November 18	Ratliff	½	Memo to NC DOT
November 18	Swanner	8	Preparation of census maps
November 19	Swanner	8	Preparation of census maps
November 20	Swanner	8	Preparation of census maps
November 21	Swanner	8	Preparation of census maps
November 21	Ratliff	2	Conference with traffic engineering consultant
	Calhoun	2	
November 21	Ratliff	1½	Conference with housing and traffic engineering consultants
	Calhoun	1½	
November 21	Ratliff	3	Conference with clients
	Calhoun	3	
November 22	Calhoun	4	Field investigation with traffic engineering consultant
November 24	Swanner	8	Preparation of census maps
November 24	Calhoun	½	Correspondence with traffic engineering consultant
November 28	Calhoun	2	Review of traffic engineering consultant alternative plan
December 4	Ratliff	1	Conference with housing consultant

YEAR 1980

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
December 5	Calhoun	¾	Correspondence with US DOT Office of Civil Rights
December 17	Ratliff	3	Conference with housing consultant

YEAR 1981

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
January 12	Ratliff	5	Legal Research
February 1	Ratliff	1½	Conference with clients
February 4	Ratliff	2	Conference with housing consultant
February 9	Calhoun	¼	Review of correspondence from NC DOT
February 11	Ratliff	2	Conference with housing consultant
February 18	Ratliff	1¾	Conference with housing consultant
February 20	Ratliff	½	Correspondence with planning consultant
February 22	Ratliff	2	Conference with clients
February 25	Ratliff	1½	Conference with housing consultant
February 26	Ratliff	¼	Phone consultation with planning consultant
March 4	Calhoun	¼	Phone consultation with traffic engineering
March 18	Ratliff	1½	Conference with housing consultant

YEAR 1981

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
March 18	Ratliff	2	Conference with housing consultant
March 23	Calhoun	¼	Phone conference with US DOT
March 24	Ratliff	1	Conference with planning consultant
March 25	Ratliff	5	Research and conference with planning consultant
March 26	Ratliff	2	Conference with planning consultant
April 1	Ratliff	1	Conference with housing consultant
April 2	Ratliff	1¼	Conference with clients
April 8	Ratliff	2	Conference with housing consultant
April 10	Calhoun	¼	Phone conference with US DOT
April 15	Ratliff	1½	Conference with housing consultant
April 22	Ratliff	1	Conference with housing consultant
April 29	Ratliff	2	Conference with housing consultant
May 6	Ratliff Calhoun	2 2	Meeting with NC DOT
May 28	Ratliff	1½	Conference with housing consultant
June 1	Calhoun	¼	Phone conference with US DOT
June 9	Ratliff Calhoun	2 2	Conference with clients

YEAR 1981

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
June 14	Ratliff	1	Conference with clients
June 28	Ratliff	1½	Conference with clients
July 8	Ratliff Calhoun	2 2	Conference with clients
July 21	Ratliff	¼	Phone consultation with planning consultant
July 31	Calhoun	3	Review of planning consultant report
July 31	Calhoun	¼	Phone conference with US DOT
August 2	Ratliff	1½	Conference with clients
August 3	Calhoun	¼	Phone consultation with traffic engineering consultant
August 4	Ratliff	3	Review of planning consultant recommendation
August 5	Ratliff Calhoun	1½ 1½	Meeting with Steering Committee representative
August 19	Ratliff Calhoun	1½ 1½	Planning
August 20	Ratliff	¼	Correspondence to planning consultant
August 31	Ratliff Calhoun	3 3	Conference with clients
September 1	Ratliff	3	Conference with clients
September 3	Ratliff	½	Phone consultation with planning consultant

YEAR 1981

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
September 3	Calhoun	¼	Phone conference with US DOT
September 8	Ratliff	3	Meeting with DOT
	Calhoun	3	
September 11	Ratliff	2	Correspondence to planning consultant
September 11	Calhoun	¼	Correspondence with traffic consultant
September 11	Calhoun	2½	Preparation of settlement proposal and correspondence to NC DOT
	Ratliff	1	
September 30	Calhoun	2	Meeting with NC DOT
	Ratliff	2	
October 1	Calhoun	¾	Phone conference with US DOT
October 1	Calhoun	¼	Phone consultation with traffic engineering consultant
October 7	Calhoun	¼	Phone conference with NC DOT
October 12	Ratliff	2	Task Force Meeting
October 15	Ratliff	2	Meeting with NC DOT, Federal Highway Administration, Duke and the City regarding alternatives and extent of Title VI mitigation
	Calhoun	2	
October 25	Ratliff	2	Conference with clients
October 27	Ratliff	2	Settlement negotiations
	Calhoun	2	

YEAR 1981

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
October 30	Calhoun	¼	Phone conference with US DOT
November 2	Ratliff	½	Conference with clients
	Calhoun	½	
November 2	Ratliff	2	Settlement negotiations
	Calhoun	2	
November 5	Ratliff	2	Meeting with clients
	Calhoun	2	
November 10	Calhoun	¼	Phone consultation with traffic engineering consultant
November 10	Ratliff	¼	Phone consultation with planning consultant
November 12	Calhoun	¾	Correspondence with traffic consultant
November 16	Calhoun	¼	Phone consultation with traffic engineering consultant
November 19	Ratliff	1½	Settlement negotiations
	Calhoun	1½	
November 20	Calhoun	1	Preparation of minutes
November 20	Calhoun	¼	Phone conference with US DOT
November 22	Calhoun	1¼	Review of traffic consultant alternatives
November 23	Calhoun	2	Consultation with planner
	Ratliff	2	
December 1	Ratliff	½	Factual research
	Calhoun	½	

YEAR 1981

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
December 1	Ratliff	2½	Meeting with clients
	Calhoun	2½	
December 6	Ratliff	1	Conference with planning consultant
December 7	Calhoun	2	Consultation with planning consultant
December 7	Ratliff	2	Consultation with planning consultant
December 8	Calhoun	2	Meeting with clients
December 9	Calhoun	1¾	Settlement negotiations
December 10	Calhoun	1	Preparation of minutes
December 16	Ratliff	3½	Settlement negotiations
	Calhoun	3½	
December 16	Ratliff	2	Legal research
December 17	Ratliff	1	Preparation of minutes
December 23	Calhoun	¼	Phone conference with US DOT

YEAR 1982

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
January 6	Ratliff	3½	Settlement negotiations
	Calhoun	3½	
January 7	Ratliff	1	Preparation of minutes

YEAR 1982

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
January 19	Calhoun	¼	Investigation regarding feasibility of relocation
January 20	Ratliff	4	Settlement negotiations
	Calhoun	4	
January 21	Ratliff	1	Preparation of minutes
January 22	Calhoun	¼	Correspondence with traffic engineering consultant
January 25	Ratliff	1	Settlement negotiations
	Calhoun	1	
February 1	Calhoun	¼	Phone conference with US DOT
February 3	Calhoun	2½	Conference with clients
	Ratliff	2½	
February 4	Calhoun	1¼	Analysis of traffic engineering consultant alternatives
February 10	Calhoun	¼	Phone consultation with traffic engineering consultant
February 11	Calhoun	¼	Phone conference with NC DOT
February 12	Calhoun	¼	Phone conference with NC DOT
February 17	Ratliff	2½	Settlement negotiations
	Calhoun	2½	
February 19	Ratliff	1	Meeting with NC DOT
	Calhoun	1	

YEAR 1982

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
February 22	Ratliff	½	Phone consultation with planning consultant
February 23	Ratliff	3	Settlement negotiations
	Calhoun	3	
February 24	Calhoun	5	Preparation for settlement negotiations
	Ratliff	5	
February 24	Ratliff	4	Settlement negotiations
	Calhoun	4	
February 24	Calhoun	4½	Drafting of mitigation plan
February 25	Calhoun	5½	Final preparation of mitigation plan
	Ratliff	1½	
February 25	Ratliff	1	City Council meeting regarding approval of mitigation plan
	Calhoun	1	
February 26	Calhoun	¼	Phone conference with US DOT
March 12	Calhoun	¼	Phone consultation with traffic engineering consultant
March 12	Calhoun	¼	Correspondence with traffic engineering consultant
March 15	Calhoun	1	Conference with housing expert regarding house moving
March 29	Calhoun	3	Conference with NC DOT
	Ratliff	3	right-of-way representative regarding final mitigation plan preparation

YEAR 1982

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
April 5	Ratliff	¼	Phone conference with NC DOT
April 8	Ratliff	¼	Phone conference with NC DOT
April 16	Calhoun	¼	Phone conference with US DOT
April 16	Ratliff	½	Phone consultation with planning consultant
April 20	Calhoun	1	Correspondence with US DOT Office of Civil Rights
April 20	Calhoun	¾	Review of planning consultant affidavit
April 23	Calhoun	2	Conference with City, State and Federal Highway Administration regarding final mitigation plan preparation
April 23	Ratliff	3	Meeting with DOT and City to develop final mitigation plan
	Calhoun	3	
May 3	Calhoun	2½	Review of final Environmental Impact statement draft
May 3	Calhoun	¼	Phone conference with North Carolina Federal Highway Administration regarding final mitigation plan

YEAR 1982

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
May 10	Calhoun	¼	Correspondence with NC DOT regarding final mitigation plan
May 12	Calhoun	1½	Conference with City, State and Federal Highway Administration regarding final mitigation plan provisions
June 16	Ratliff	¼	Phone consultation with planning consultant
July 20	Calhoun	2½	Conference with clients
July 22	Calhoun	¼	Phone conference with US DOT
August 23	Calhoun	1½	Conference with City, State and Federal Highway Administration regarding development of final mitigation plan
August 26	Calhoun	2	Conference with City, State and Federal Highway Administration regarding final mitigation plan
September 1	Calhoun	¼	Phone consultation with traffic engineering consultant
September 1	Calhoun	¾	Phone conference with North Carolina Federal Highway Administration
September 7	Calhoun	2	Meeting with City, State and Federal Highway Administration regarding final mitigation plan

YEAR 1982

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
September 3	Calhoun	½	Legal consultation regarding City authority
September 10	Calhoun	2	Conference with housing attorney expert regarding City authority for mitigation plan
September 15	Calhoun	1½	Conference with City, State and Federal Highway Administration regarding final mitigation plan
September 29	Calhoun	¼	Phone conference with NC DOT
October 12	Calhoun	¼	Phone conference with NC DOT
October 14	Calhoun	7	Preparation of motion to intervene and proposed complaint
October 22	Calhoun	1½	Conference with City attorney regarding draft of final mitigation plan and contract
October 22	Calhoun	2½	Review of draft of final mitigation plan and contract
October 25	Calhoun	3½	Negotiation meeting with NC DOT and City regarding final mitigation plan

YEAR 1982

CREST STREET ATTORNEYS' FEES

DATE	ATTY.	HRS.	ACTIVITY
November 1	Calhoun	4	Negotiations with NC DOT and City regarding final mitigation plan
November 2	Calhoun	5	Negotiations with NC DOT and City regarding final mitigation plan
November 4	Calhoun	6½	Negotiations with City and NC DOT regarding final mitigation plan
December 3	Calhoun	2	Meeting with City and NC DOT regarding final mitigation plan
December 10	Calhoun	3½	Preparation of consent judgment
December 14	Calhoun	2½	Review of final mitigation plan and municipal agreement drafts

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA
DURHAM DIVISION

File No. C-83-1239-D

(Parties omitted in printing)

ANSWER

(Filed 22 December 1983)

The defendants North Carolina Department of Transportation, North Carolina Board of Transportation, and William R. Roberson, as Secretary of the North Carolina Department of Transportation and Chairman of the North Carolina Board of Transportation, through their undersigned counsel, answer the Complaint herein as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of the action and over the person of the defendants.

SECOND DEFENSE

In essence this is an action against the State of North Carolina, which has not consented to suit nor otherwise waived its sovereign immunity or its immunity from suit under the Eleventh Amendment to the Constitution of the United States.

THIRD DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

FOURTH DEFENSE

The plaintiff lacks standing to bring and maintain this action.

FIFTH DEFENSE

The plaintiff has failed to pursue and exhaust its administrative remedies.

SIXTH DEFENSE

The consent judgment in an action brought in the United States District Court for the Middle District of North Carolina captioned Ecos, Inc., et al, Plaintiffs, v. Claude S. Brinegar, et al, Defendants (No. C-352-D-72) is an adjudication on the merits in favor of these defendants as to the claims of civil rights violations therein asserted with respect to the Durham East-West Freeway and the plaintiff is thereby barred by collateral estoppel from maintaining this action.

SEVENTH DEFENSE

Answering specifically the numbered paragraphs of plaintiff's Complaint using the same format and paragraph numbering, the defendants respond and say as follows:

INTRODUCTION

1. Plaintiff's characterization of the legal nature of his action requires no answer; but to the extent an answer is deemed required, the allegations of paragraph 1 are denied.

PARTIES

2. The allegations of paragraph 2 are admitted upon information and belief except the allegation that all of the plaintiff's members reside in Durham, North Carolina, is denied for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3. The defendants admit with the qualification herein stated that the North Carolina Department of Transportation is an agency of the State of North Carolina; that its powers, duties and responsibilities are as provided by law and include the responsibility for determining the selection, location and design of Federal-aid highways in North Carolina, including the Durham East-West Freeway, for recommendation of such selection, location and design to the Secretary of the United States Department of Transportation who has the ultimate decision making power with respect to such matters; and that the North Carolina Department of Transportation is responsible for carrying out the construction of such highways.

4. The defendants admit that the North Carolina Board of Transportation has the powers, duties, and responsibilities with respect to the North Carolina Department of Transportation as provided by law but deny that it is the "governing body" thereof.

5. The defendants admit that William R. Roberson is Secretary of the North Carolina Department of Transportation, and, *ex officio,* is Chairman of the North Carolina Board of Transportation.

JURISDICTION

6. The plaintiff's allegations of the statutory basis of the jurisdiction of the Court do not require an answer;

but, to the extent an answer may be deemed to be required, the allegations of paragraph 6 of the Complaint are denied.

FACTS

7. Defendants admit that in 1976 the North Carolina Department of Transportation resumed planning measures for the purpose of completing construction of the Durham East-West Freeway, a portion of which, if implemented as then planned, would pass through the Crest Street community, a stable, cohesive, black neighborhood in Western Durham, North Carolina. Except as admitted, the defendants deny the allegations of paragraph 7 of the Complaint.

8. Defendants admit the allegations of paragraph 8 of the Complaint.

9. Defendants admit that to the extent planning for the location and design of the freeway, had been developed by the North Carolina Department of Transportation (working in cooperation with the Federal Highway Administration) in 1976, it was apparent that construction of the freeway and its interchange in the Crest Street community would have a substantial harmful effect upon it, would displace many persons (including, in response to its own request, the community church), and would physically divide the community. Defendants further admit that the lengthy planning for construction of the freeway had a chilling effect on public and private development in its proposed path, including public and private development in the Crest Street community. Except as admitted herein, defendants deny the allegations of paragraph 9 of the Complaint.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint.

11. Defendants admit that during 1977 and 1978 defendants received communications opposing construction of the freeway through the Crest Street community from persons and organizations within and without the community and requests for traffic data and that defendants proceeded with issuing a revised draft environmental impact statement for the freeway through the Crest Street community. Except as admitted, defendants deny the allegations of paragraph 11 of the Complaint.

12. Defendants admit the Durham East-West Freeway was and is a Federal-aid highway project, with Federal funds providing approximately seventy-five percent (75%) of the costs of the project (except for the segment between Irwin Road and Chapel Hill Street, which was constructed wholly with State funds).

13. Defendants admit that in September 1979 Save Our Church And Community Committee, Durham, North Carolina and Residents of Crest Street Community, Durham, North Carolina, as Complainants, filed an "Administrative Complaint" against Brock Adams, Secretary of Department of Transportation, and other federal officials, as Respondents, pursuant to the provisions of 49 CFR 21.11 (1977) seeking an investigation of the practices of the North Carolina Department for compliance with Title VI of the Civil Rights Act of 1964 and 49 CFR 21 (1977) with respect to the Durham East-West Freeway (and the Federal-aid highway program for entire State) as well as compliance with other Federal-aid eligibility laws. Ex-

cept as admitted, defendants deny the allegations of paragraph 13 of the Complaint.

14. Defendants admit that the Director of Civil Rights of the United States Department of Transportation, without the notification required by law, proceeded to have the allegations of the "Administrative Complaint" investigated and sent a field investigator to the Raleigh-Durham area; that the investigator spent some time obtaining information and materials from the complainants and their representatives and from the professional staff of the North Carolina Department of Transportation; that by letter dated 20 February 1980 the Director of Civil Rights informed the Secretary of the North Carolina Department of Transportation of "our preliminary judgments concerning the alignment proposed in the Draft EIS and challenged by the Title VI complaint, so that you may take them into account in your future planning . . . " and her conclusion, that based upon her "preliminary judgments, we find reasonable cause to believe that the construction of the Expressway along the alignment proposed in the Draft EIS would constitute a prima facie violation of Title VI and, in particular, Section 21.5(b)(3) of our Departmental Title VI regulation . . . " Except as admitted, defendants deny the allegations of paragraph 14 of the Complaint.

15. Defendants admit that subsequent to the 20 February 1980 letter from the Director of Civil Rights to the Secretary of the North Carolina Department of Transportation members of the staff of the North Carolina Department of Transportation met extensively with complainants and plaintiff, and their representatives, other opponents of the freeway, and representatives of the City of Durham, Federal Highway Administration and United States Department of Transportation for the purpose of resolving the controversy about further construction of the freeway. Defendants further admit that in February 1982, plaintiff, the North Carolina Department of Transportation (with the approval of the Federal Highway Administration) and the City of Durham reached agreement on a concept for a combination of expressway design, relocation assistance benefits and Federally assisted housing and community program to be provided by the Department and the City in order to mitigate the adverse impact of the expressway construction on the Crest Street community and that the intent of this agreement is to preserve and strengthen the Crest Street community. Defendants also admit that in this agreement plaintiff specifically asserted and reserved, and the Department and the City denied, any right of plaintiff to receive its attorney fees. Except as admitted herein, defendants deny the allegations of paragraph 15 of the Complaint.

16. Defendants deny that plaintiff moved to intervene in the case of Ecos, Inc. et al v. Brinegar, et al prior to the agreement as to settlement and the mitigation plan being reached between plaintiff, the North Carolina Department of Transportation and the City of Durham.

17. Defendants deny that the settlement agreement is the direct result of the legal proceedings and actions for which plaintiff now seeks attorneys' fees.

18. Defendants admit plaintiff has presented the North Carolina Department with a statement of expenses and attorney fees and defendants have refused to pay the

statement. Except as admitted, the allegations of paragraph 18 of the Complaint are denied.

CLAIM FOR RELIEF

19. Defendants deny the allegations of paragraph 19 of the Complaint.

EIGHTH DEFENSE

Under the special circumstances of this case it would be unjust and inequitable to require the defendants pay the plaintiff's expenses and attorneys fees.

NINTH DEFENSE

Upon information and belief the expenses and attorney fees claimed by the plaintiff are excessive and unwarranted.

PRAYER FOR RELIEF

Wherefore, defendants pray for relief as follows:

(1) That this action be dismissed.

(2) That as a matter of law the plaintiff's prayer for relief be denied.

(3) That in the discretion of the Court the plaintiff's prayer for relief be denied.

(4) That defendants be given a complete and accurate accounting of any expenses and attorney fees of the plaintiff which the defendants may be required to pay.

(5) That the defendants be granted such other relief as the Court finds to be just and proper.

This the 21 day of December, 1983.

RUFUS L. EDMINSTEN
Attorney General

s/ James B. Richmond
Special Deputy Attorney General
N. C. Department of Justice
Raleigh, North Carolina
Attorney for Defendants

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

File No. C-83-1239-D

(Parties omitted in printing)

AMENDMENT TO COMPLAINT

(Filed 22 June 1984)

Plaintiff amends its complaint as follows:

A. Plaintiff amends the style of this action to read:

CREST STREET COMMUNITY COUNCIL, INC., RESIDENTS OF CREST STREET COMMUNITY, and SAVE OUR CHURCH AND COMMUNITY COMMITTEE,

Plaintiffs,

v.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, NORTH CAROLINA BOARD OF TRANSPORTATION, and WILLIAM R. ROBERSON, as Secretary of the North Carolina Department of Transportation and Chairman of the North Carolina Board of Transportation,

Defendants.

B. Plaintiff adds the following parties:

1. The Residents of Crest Street Community is an association of Crest Street residents which was organized in 1976 as a community council of Carolina Action for the purpose of preserving and improving the Crest Street Community.

2. Save Our Church and Community Committee is a committee of representatives from the Residents of

Crest Street Community who are authorized by the Residents of Crest Street Community to act on its behalf.

C. Plaintiff amends its factual allegations as follows:

1. Paragraph 13 of the original complaint should be amended to read as follows:

"13. In September 1973 plaintiffs, the Residents of Crest Street Community and the Save Our Church and Community Committee, under Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, and pursuant to the United States Department of Transportation (USDOT) Title VI procedures set out in 49 CFR 21, filed an administrative complaint with the United States Department of Transportation, stating that plaintiff's civil rights were being violated by the defendants' plans and efforts to construct an expressway through the Crest Street Community. Subsequent to the filing of this Administrative Complaint, the Crest Street Community Council, Inc. was incorporated and it assumed the purposes and activities, including prosecution of the Administrative Complaint, of the Residents of Crest Street Community and the Save Our Church and Community Committee."

D. Everywhere that "plaintiff" appears in the original complaint, it should be amended to read "plaintiffs", and where appropriate "its" should be amended to read "their."

This the 21st day of June, 1984.

NORTH CENTRAL LEGAL ASSISTANCE PROGRAM

DURHAM, NORTH CAROLINA

ATTORNEYS FOR PLAINTIFFS

s/ BY ALICE A. RATLIFF

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

File No. C-83-1239-D

(Parties omitted in printing)

ANSWER TO
AMENDMENT TO COMPLAINT

(Filed 3 July 1984)

The defendants North Carolina Department of Transportation, North Carolina Board of Transportation, and William R. Roberson, as Secretary of the North Carolina Department of Transportation and Chairman of the North Carolina Board of Transportation, through their undersigned counsel, answer the Amendment to Complaint herein as follows:

1. These defendants adopt by reference all of the defenses and the allegations therein as set forth in their Answer filed in this cause dated 21 December 1983 as if set forth verbatim herein.

2. Answering specifically the allegations of the Amendment to Complaint, these defendants say and allege as follows:

A. These defendants admit that the plaintiff has amended the style of this action to read as set forth in paragraph A of the Amendment to Complaint.

B. The allegations of paragraphs B 1 and 2 of the Amendment to Complaint are denied.

C. It is admitted that in September 1978 a document styled an "Administrative Complaint" was filed against

named Federal officials by "Save Our Church and Community Committee, Durham, North Carolina;" and "Residents of Crest Street Community, Durham, North Carolina" as complainants. It is further admitted that subsequent to the filing of this "Administrative Complaint" the Crest Street Community Council, Inc. was incorporated. Except as admitted herein, the allegations of paragraph 13 of the original Complaint as amended by paragraphs C 1 of the Amendment to Complaint are denied.

D. The allegations of paragraph D of the Amendment to Complaint are admitted.

This the 2nd day of July, 1984.

RUFUS L. EDMISTEN
Attorney General

s/ James B. Richmond
Special Deputy Attorney General
N. C. Department of Justice
Raleigh, North Carolina
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

File No. C-83-1239-D

(Parties omitted in printing)

MOTION FOR SUMMARY JUDGMENT

(Filed 8 August 1984)

Plaintiffs, by their attorneys and pursuant to Rule 56 of the Rules of Civil Procedure, move the court to enter summary judgment for the plaintiffs on the ground that there is no genuine issue as to any material fact, and the plaintiffs are entitled to judgment as a matter of law.

In support of this motion, plaintiffs refer to the record herein, including the amended complaint and answer thereto, the discovery in this action and the affidavits filed by plaintiffs in support of this motion.

This the 8 day of August, 1984.

NORTH CENTRAL LEGAL ASSISTANCE PROGRAM

Attorneys for Plaintiffs

s/ BY: MICHAEL D. CALHOUN
Durham, North Carolina

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

File No. C-83-1239-D

(Parties omitted in printing)

AFFIDAVIT OF WILLIE PATTERSON

(Filed 8 August 1984)

WILLIE PATTERSON, being first duly sworn, deposes and says:

1. I am a resident of the Crest Street Community and I have lived in the Crest Street Community for all of my life except for my time in service in the armed forces and I lived in the Community continuously for the last ten years.

2. The Residents of Crest Street Community is an association of Crest Street residents which was organized in 1976 as a community council of Carolina Action, a not for profit organization providing assistance to low-income and moderate income neighborhoods, for the purpose of preserving and improving the Crest Street Community. I have been president of this association since it was organized.

3. The Save Our Church and Community Committee is a committee of representatives from the New Bethel Baptist Church and Residents of Crest Street Community who are authorized by the Residents of Crest Street Community to act on its behalf. I have been the acting chairman of the Save Our Church and Community Committee since its formation in 1977.

4. The Crest Street Community is a cohesive black community with approximately 200 households in the western part of Durham County, North Carolina. Our community which is over one hundred years old, is very close knit and it provides support services to its members, and particularly to the substantial number of elderly persons in the community. We have a low crime rate in the community and our children attain high levels of educational achievement. Our community is centered around the New Bethel Baptist Church and a majority of the community residents are members of the Church and regularly attend its services.

5. The Durham East/West Freeway has had an impact on the Crest Street Community for many years. The project was proposed and designated a high priority in the late 1950s. The design and location of the Freeway, as originally planned and as later revised, would have had a devastating impact on the Crest Street Community. The plans called for a major interchange to be built in the middle of the community. More than half of the community residents would be displaced by the right-of-way for the project as would the community church and park. The remaining residents would be isolated from each other by Freeway ramps and would be subject to intense commer-

cialization pressure. Even though the Freeway was planned in the 1950s, active efforts to initiate construction of the section of the Freeway that would displace the Crest Street Community did not begin until the mid 1970s. The effect of the long delays in implementing the East/West Freeway was that private and public investors were discouraged from putting money into the Community because they feared that the Expressway would be built soon and would destroy any improvements. Consequently, though our community was strong in spirit, the physical infrastructure of the community was in poor condition by the late 1970s. Our streets were dirt or temporary strip paving and many of the streets were nearly impassable. For recreational facilities, we had only a small "lot" park with minimal equipment. And, our houses were in poor repair. We sought assistance from the City of Durham, such as it had provided other similar neighborhoods, to improve these conditions. However, the assistance was denied on the basis that the Freeway would destroy any improvements.

6. When the North Carolina Department of Transportation began in 1976 to actively proceed with plans to begin construction of the section of the Freeway which would displace much of the Crest Street Community, the community expressed its opposition to these plans to the North Carolina Department of Transportation. The residents of the Crest Street Community retained the North Central Legal Assistance Program in March of 1977 to represent it concerning the planning and construction of the East/West Freeway and remedial efforts to mitigate the past adverse impact of the Freeway on the community. Shortly thereafter the Save our Church and Community Committee was formed as a representative of the community asso-

ciation and the New Bethel Baptist Church and, it too, retained the North Central Legal Assistance Program for representation in these matters.

7. In September 1978, the residents of the Crest Street Community and the Save Our Church and Community Committee, filed an administrative complaint pursuant to 49 CFR 21, with the United States Department of Transportation asserting that the planning and construction of the East/West Freeway was in violation of Title VI of the Civil Rights Act of 1964. (A copy of this administrative complaint is attached hereto as Exhibit A and is incorporated by reference.)

8. On February 4, 1980, the Crest Street Community Council, Inc. was incorporated and it assumed the purposes and activities, including prosecution of the admin istrative complaint, of the Residents of Crest Street Community and the Save Our Church and Community Committee.

9. In February 1980 the United States Department of Transportation, Office of Civil Rights, in response to the administrative complaint, issued a preliminary finding that the Community residents' rights under Title VI were being violated. (A copy of this finding is attached hereto as Exhibit B and is incorporated by reference.) Subsequent to this finding, plaintiffs entered into extended negotiations with defendants and other parties seeking to resolve the issues raised by the administrative complaint.

10. In February 1982, plaintiffs reached preliminary agreement with the City of Durham and with representatives of the defendants as to a preliminary mitigation concept which would address the issues raised in the admin-

istrative complaint. Negotiations on a final mitigation plan to finally resolve these issues continued.

11. Since 1972, the East/West Freeway has been the subject of an action pending in the United States District Court for the Middle District of North Carolina under the title *ECOS, Inc., et al. v. Brinegar, et al.*, File No. C-352-D-72. In October 1982, the Crest Street Community Council, Inc., moved to intervene in this action, asserting, *inter alia,* its rights under Title VI of the Civil Rights Act of 1964. (A copy of this Motion is attached hereto as Exhibit C and incorporated by reference.)

12. During this time plaintiffs continued negotiations with the defendants and reached final agreement, which was executed by the plaintiffs and defendants on December 15, 1982. (A copy of this Final Mitigation Plan and the accompanying municipal agreement between the City of Durham and the North Carolina Department of Transportation is attached hereto as Exhibits D and E, respectively, and incorporated by reference. The attachments which are referred to in Exhibit E are not relevant to the case at bar and thus have been omitted.) At this same time, plaintiffs, defendants and other parties in the *ECOS* action, submitted a proposed consent judgment to this Court and this Court entered the judgment which dismissed that action. (A copy of this Judgment is attached hereto as Exhibit F and is incorporated by reference.)

13. Under the terms of the Final Mitigation Plan, the location and design of the Freeway in the Crest Street Community was modified and the community will be relocated together, with greatly improved housing and public facilities to the western part of the existing community

site and adjoining vacant land. The Freeway location was moved to the north and the interchange design was narrowed. These changes eliminated the taking of the Community park and church, reduced the number of households displaced and allowed more land for the new community site. The new community will have fully paved, curbed and guttered streets with sidewalks, as well as substantial recreational facilities, including a baseball field, lighted basketball courts and a community center. Regarding housing, conditions will be dramatically improved for both owners and renters.

14. The implementation of the Mitigation Plan agreed to by plaintiffs and defendants, though only half complete, appears to be both substantially improving the housing and infrastructure of the Crest Street Community and preserving our community spirit.

s/ Willie Patterson

(Jurat omitted in printing)

EXHIBIT A

BEFORE THE SECRETARY
OF THE
UNITED STATES DEPARTMENT OF
TRANSPORTATION

September 7, 1978

No. .....

COMPLAINANTS:

SAVE OUR CHURCH AND COMMUNITY COMMITTEE, DURHAM, NORTH CAROLINA;

RESIDENTS OF CREST STREET COMMUNITY, DURHAM, NORTH CAROLINA.

RESPONDENTS:

BROCK ADAMS, SECRETARY DEPARTMENT OF TRANSPORTATION;

KARL S. BOWERS, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION;

RICHARD PAGE, ADMINISTRATOR, URBAN MASS TRANSPORTATION ADMINISTRATION;

J. D. LACY, REGION IV ADMINISTRATOR, FEDERAL HIGH ADMINISTRATION;

T. J. MOROWSKI, DIVISION ADMINISTRATOR, FEDERAL HGHWAY ADMINISTRATION.

ADMINISTRATIVE COMPLAINT

PARTIES

Complainants to this administrative action are the residents of Crest Street Community and the Save Our Church and Community Committee. Crest Street Community is a long-established black community of over 200 households

located in the western part of Durham, North Carolina. The Save Our Church and Community Committee is a neighborhood association representing the residents of Crest Street Community in their efforts to prevent the destruction of their community by the proposed extension of the Durham East/West Expressway, a Federal-Aid Highway project. Respondents are the Secretary of the United States Department of Transportation, or the Federal Highway Administrator, the Urban Mass Transportation Administrator, and the Region IV and Division Administrators of the Federal Highway Administration.

JURISDICTION

The Department of Transportation has jurisdiction over this action pursuant to:

1. 23 CFR 450.122 (1977) which provides that the Federal Highway and Urban Mass Transportation Administrators shall review and evaluate the transportation planning process in each urbanized area;

2. 23 CFR 795.5(g) and 795.6(a) (1977), which provide that the Federal Highway Administration is responsible for the review of the Action Plan and its implementation;

3. 23 CFR 771.2(b) (1977) which provides that the Federal Highway Administration Division Administrator shall review the draft EIS; and

4. 49 CFR 21.11 (1977) which provides that the Secretary shall review the practices of recipients to determine if they are complying with Title VI of the Civil Rights Act of 1964 and 49 CFR 21 (1977).

INTRODUCTION

The Save Our Church and Community Committee ("SOCCC") and the residents of Crest Street Community bring this action against the illegal and inappropriate administrative actions taken by the North Carolina Department of Transportation ("NCDOT") and the United States Department of Transportation ("DOT") regarding the proposed extension of the Durham East/West Expressway project through the Crest Street Community. Construction of this project would take the community church and over half of the homes in the community. The remaining homes would be separated from each other by ramps and roadways. In short, a large stable, cohesive, long-standing, black neighborhood would be destroyed. Furthermore, this project has been planned for many years. The continued threat of the extension of the expressway would perpetuate the years of deprivation of municipal and federal spending in the community to the fear that any improvements would soon be destroyed.

STATEMENT OF CLAIMS

The proposal to extend the expressway through Crest Street Community is violative of 23 USC § 109(h) (1978 Supp.) 23 CFR 450, (1977), DOT FHWA Instructional Memorandum 50-3-71, DOT FHWA Policy and Procedure Memorandum 50-9, 23 USC 109(h) (1978 Supp.), the National Environmental Policy Act, 42 USC § 4331 *et seq.* (1974), 23 CRF parts 771 and 795 (1977), DOT FHWA Program Manual 7-7-1 and 2, Title VI of the Civil Rights Act of 1964, 42 USC § 2000d (1970), Title VIII of the Civil Rights Act of 1968, 42 USC § 3601 *et seq.* (1970) and 49 CFR 21 (1977).

In support of these claims complainants put forward the following facts:

PROGRAM PLANNING

1. The Durham Urban Area has no current thoroughfare plan nor does it have current data on which to base an accurate thoroughfare plan. The last Durham thoroughfare plan was based on a study issued by Harlen Bartholomew and Associates in 1967. This study was based on data collected in 1964. There have been no comprehensive studies to evaluate the current validity of this eleven year old thoroughfare plan. Nor has there been any attempt to collect current origin/destination data or other trip data.

2. Due to this lack of thoroughfare planning there has been no public participation in or comment on thoroughfare planning since the 1967 report was presented.

3. The NCDOT thoroughfare planning unit is currently revising the Durham thoroughfare plan. However, they have not collected any new origin/destination data and they do not intend to collect any such data before completing their revision. Furthermore, NCDOT plans to issue the draft EIS on the East/West Expressway before the completion of this revision of the Durham thoroughfare plan.

PROJECT PLANNING

1. The Durham East/West Expressway was originally planned in the late 1950s. It was originally conceived as an intra-city bypass to U.S. 70. In the 1960s the concept of the project was expanded. During that time the

expressway was constructed from Interstate 40 at the Research Triangle Park to the middle of Durham. It was also at this time that plans were made to extend the project to I-85 west of Durham. Additional sections of the expressway were constructed to Erwin Road in 1973. NCDOT presently proposes to extend the expessway to U.S. 15-501.

2. As with the program planning, sufficient data is not available to study this proposed extension of the expressway. In December 1977 complainants, through their counsel, requested certain data from NCDOT. Among these items requested were: (a) a trip table; (b) selected link analysis for the proposed expressway sections between 15-501 and Erwin Road; (c) regional projections of population and automobile ownership; (d) the forecasting technique, including models and regression equations, used in the project analysis; (e) historical data, including population and average daily traffic counts for Hillsborough Road, on an annual basis from 1965 to the present. NCDOT in response to complainants' counsel supplied none of these materials. They stated in part: "Current trip tables are not available at the present time"; "Since traffic has not yet been assigned to the network and analyzed, a selective link analysis is not available at the present time"; and "The general procedures used in forecasting traffic for the thoroughfare plan are shown on the enclosed flow chart. The actual models and regression equations will be summarized in technical reports that are being prepared but are not available at the present time."

3. Complainants' counsel have renewed the request for this information several times during the current year. NCDOT has still not yet provided this data. Com-

plainants' counsel also requested that since this data was essential to analyze the project, NCDOT should not issue the draft EIS on this project until complainants' counsel received this information and had sufficient time to evaluate and prepare alternatives to the NCDOT plan. In response to this request NCDOT stated they would issue the draft EIS before this material became available.

4. This data is essential to evaluation of the proposed extension of the expressway and any alternatives to this action. Complainants have retained a traffic engineer for consultation in this matter. The absence of this data prevents complainants and other citizens from participating in this project. The absence of this data also prevents NCDOT from making any good faith considerations of alternatives.

5. NCDOT has in fact failed to make a good faith study of alternatives. Complainants and other citizens' groups in Durham have requested that a combination of actions, to reduce the traffic demands on roads in west Durham and to improve the flow of traffic on those roads be considered as an alternative to an extension of the expressway. NCDOT has indicated that they will consider only limited isolated improvements to roads in west Durham rather than a full range of alternative actions.

6. Because of the lack of a study of alternatives by NCDOT the Durham City Council directed its own staff to study alternative road networks in west Durham. That study is being released by the City next week. Using data supplied by NCDOT the City staff has generated several plans which appear economically and technically feasible assuming the validity of this data.

7. Despite the facts that NCDOT had not yet issued an approved EIS and that they had not made a comprehensive study of alternatives, both the project director and project engineer for the proposed extension have made public statements that the extension of the expressway is the only solution for west Durham traffic.

8. NCDOT has failed to facilitate public participation in the planning of the project. In January 1978 NCDOT held three neighborhood meetings in Durham for the ostensible purpose of obtaining public input into the proposed East/West Extension. However, at these meetings NCDOT presented only a map of the proposed extension and did not include any discussion or possibility of alternatives.

9. In addition to deterring public participation in this project, NCDOT has engaged in extensive private planning sessions with an institution and a business in Durham. At the request of the institution an interchange on the proposed extension was relocated. NCDOT did not make these meetings known to the public. Also, NCDOT knew that the residents of Crest Street were interested in expressway plans but they were not notified of these meetings.

10. NCDOT has also deliberately attempted to prevent a full public discussion of the proposed extension of the East/West Expressway. In a memorandum from the project director, he states regarding the East/West Expressway:

> "The extension of Anderson Street and the related improvements to the street system of the area can be handled either as a part of the East-West Freeway Project or as a separate project. The extension

of Anderson Street could be considered as a logical part of the freeway project since it replaces Trent Drive as the North/South artery for this area. If the extension is made part of the freeway project, it would displace businesses and residences and affect a neighborhood not previously affected by the freeway. By involving an additional neighborhood in the freeway project there is the possibility of increasing the controversy of the entire project. The project is already controversial enough without adding any additional opposition.

Therefore, it is my opinion the Anderson Street Extension and related improvements should be handled as a separate project." (Page 2 of Memorandum; a copy of this memorandum is attached as Exhibit 1).

11. NCDOT is also preventing full public discussion of this issue by their understatement of the relocation problems that would be created by the extension of the expressway. In their relocation report (copy attached as Exhibit 2), they state that sufficient housing for a large number of low income relocatees will be available from the Durham Housing Authority. Citing the fact that the Durham Housing Authority manages approximately 2400 units they omit that there is presently a waiting list of almost 1000 persons for that housing. Thus, their conclusion that additional housing will not be needed is erroneous. They also state that there is not a significant number of elderly families in this area. In fact, a large number of the residents in Crest Street Community are elderly.

DISCRIMINATION AGAINST MINORITIES

1. Construction of the East/West Expressway from Erwin Road to 15-501 would displace a disproportionately large number of blacks. While less than one third of Durham is black according to the 1970 census, almost all of the approximately 250 persons who would be displaced are black.

2. Displacement in this case would work special hardships. Most of these people are low-income renters. They would have difficulty finding any housing in Durham's tight housing market even with relocation assistance. The reduction of Durham's low-income housing stock by more than a hundred homes due to the construction of the Expressway would exacerbate this housing shortage. When the renters' relocation benefits ended they would be tossed back into a housing market with no vacancies.

3. The construction of this proposed extension of the expressway would also work a special hardship on these people because of the character of Crest Street Community. Recently an anthropologist at Duke University completed a year long study of the community. (A copy of this study is attached as Exhibit 3). The anthropologist's findings show a cohesive neighborhood often described as a large family. In fact, kinship ties runs strong in the community. The community was built around the New Bethel Baptist Church which is entering its centennial year. In 1964 the community, with assurances that the building site was safe from the expressway plans, constructed a beautiful new church. The proposed right of way has been changed. Now this church would be destroyed. Other cohesive black neighborhoods have been disrupted by the construction of early parts of this expressway. The present plans for construction from Erwin Road to 15-501 would continue this discrimination against black neighborhoods.

4. The residents of Crest Street Community are also victims of another type of racial discrimination by NCDOT. From 1915-1973 final decisions on NCDOT projects were made by the N. C. Highway Commission. This body made all of the decisions to date regarding the East/West Expressway. In the entire history of this commission every member was a white male; all blacks were excluded. This discrimination persists in the present NCDOT governing body. The N.C. Board of Transportation replaced the Highway Commission in 1973. Of the 24 members on the current board, only two of these members are black. Blacks compose one-fourth of the North Carolina population, according to the 1970 census.

5. This discrimination is also present in the highway planning and research staff. There were no black engineers or planners until this decade. Today only four percent of this staff is black.

6. This exclusion of blacks from critical planning and policy positions has adversely impacted the complainants in that persons familiar with and representative of black communities and people have been excluded from the decision-making process. This has resulted in projects such as this proposed extension of the expressway which have a disproportionately adverse impact on blacks.

7. This history and continuing employment discrimination against blacks in NCDOT takes on additional significance in light of the deficiencies in the present data and the lack of a serious study of alternatives today. By failing to engage in a continuing transportation planning process, NCDOT has adopted without evaluation a project planned at a time when blacks were totally excluded from the decision-making process.

8. NCDOT's discrimination by refusing to re-evaluate plans or consider alternatives is made complete by their position on funding. NCDOT has indicated that it would be unwilling to fund any alternatives to the expressway. Instead, they threaten to return the money earmarked for the expressway to the general fund and place any request for funding an alternative at the bottom of a crowded project list. The proposed extension is a primary-aid project and these funds could easily be transferred to urban funds and used to finance many alternatives. NCDOT's position on funding discriminates against complainants by precluding any alternatives that, unlike the proposed project, would not have a disproportionately heavy impact on blacks.

9. Finally, NCDOT has discriminated against complainants by the selection of projects and the location of projects in Durham. The 1967 Durham thoroughfare plan included a roughly designated corridor for a Southern Freeway in Durham. This project was studied in depth during 1969-71. In 1973 Harland Bartholomew and Associates issued a report on this project. They concluded that the need for the Southern Freeway in South Durham was clearly established. This project was never built, however. Instead, due to the opposition of white neighborhoods in Southern Durham the proposal was killed. In contrast, NCDOT has been unresponsive to the concerns of complainants. Complainants have actively opposed this project for twenty years. This year, after complainants protested vigorously at a neighborhood meeting held by NCDOT in January, NCDOT's response was to prepare "alternatives" which were mere shifts of the existing alignment by approximately 140 feet. During the City

Council meeting at which NCDOT presented these different alignments it became apparent, and NCDOT acknowledged, that they had not investigated the geographic extent of the community nor had they made an on-site inspection to determine the impact of these alignment shifts. In fact, these shifts saved few community homes and brought many of the finest owner-occupied homes in the community into the right-of-way. These actions illustrate the discriminatory manner in which NCDOT has responded to black and white neighborhoods in Durham.

ADMINISTRATIVE CLAIMS

The complainants assert the following administrative claims with respect to the actions of NCDOT:

I. *NCDOT has failed to engage in a continuing comprehensive planning process in violation of 23 USC § 134(a), DOT regulations and DOT policy memorandum.*

A. DOT regulations implement 23 USC § 134(a). These regulations, at 23 CFR 450, require, *inter alia,* that NCDOT engage in appropriate technical activities. The details of this requirement are fleshed out in DOT policy and procedure memorandum 50-9. Sections 5(d) and (e) specify the extensive data collection needed for a continuing comprehensive planning process. Section 4(c) of this memorandum states " . . . transportation plans should be re-evaluated and updated when necessary, but not less frequently than every five years." The Durham thoroughfare plan has not been updated in eleven years. Also, the revision in progress does not include the data specified in this memorandum, particularly the travel pattern data in Section 5(e).

B. NCDOT has also failed to bring in citizen participation as required by 23 CFR 450.120(a)(3) and Section 6 of PPM 50-9.

C. Pursuant to DOT Instructional Memorandum 50-3-71, a recipient must comply with PPM 50-9 to have its 3C process certified. NCDOT's violations of PPM 50-9 mandate the withholding of this certification.

D. DOT Regulation 450.120(2) requires that the 3C planning be co-ordinated with air quality planning under the Clean Air Act, 42 USC § 1857. Such coordination is impossible in the Durham area due to the absence of current traffic data or throughfare plan. Durham is presently waiting for monitoring results to determine if recent data finding Durham a non-attainment area was valid.

II. *NCDOT has failed to comply with the Action Plan requirements in violation of 23 USC § 109(h), DOT regulations and DOT policy memorandum.*

A. The N.C. Action Plan reiterates many of the program planning requirements above, including data collection, thoroughfare planning, and citizen participation. (N.C. Action Plan, pp. 40-43). As shown above, these elements have not been met in the instant case.

B. The N.C. Action Plan also specifies many project planning procedures. Perhaps the most critical of these is the comprehensive study of a broad range of alternatives. (N.C. Action Plan p. 74). In this case NCDOT has neither engaged in such a study nor collected the data necessary to do so.

C. NCDOT has omitted relevant portions of this highway project from its draft EIS in fear of arousing

controversy. This is a violation of NEPA, 42 USC § 4331 *et seq.*, which requires a full disclosure of the impact of a proposed action. Staff members of NCDOT have also violated NEPA by making recommendations of this project *before* the completion of the EIS process. These actions, in addition to violating NEPA, are violative of the EIS requirements of the N.C. Action Plan and DOT regulations at 23 CFR 771.

D. The draft EIS perpared by NCDOT is deficient in that: (1) it does not contain a study of a broad range of alternatives as required by NEPA and 23 CFR 771.18(j); it does not discuss the impact of the Anderson Street extension that was omitted in fear of generating controversy in violation of 23 CFR 771.18(i); and it does not assess the impacts of relocation and the impact on the elderly as required by 23 CFR 771.18(i)(2)(i) and (ii). For these reasons the FHWA Division Administrator should refuse to approve the draft EIS for release at this time.

III. *NCDOT has racially discriminated against complainants in violation of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and 49 CFR 21 by proposing to extend the East/West Expressway through the Crest Street Community.*

A. Section 21.7 (d) of 49 CFR prohibits a recipient from locating a facility if the purpose or effect is to discriminate against any individuals on the grounds of race. The present proposed location of the extension of the East/West Expressway has such an effect and is thus violative of this section.

B. Title VIII of the Civil Rights Act of 1968 guarantees the right to equal housing opportunities, without regard to race. In order to assure this equal opportunity the East/West Expressway must not be extended through Crest Street Community. The resulting displacement of hundreds of minority persons and the destruction of over a hundred units of low income housing would prohibit the members of Crest Street Community and other low-income persons in Durham from exercising these rights. Additionally, housing includes more than the physical structure. The residents of Crest Street Community live in a supportive, close neighborhood. Title VIII protects their right to remain there.

C. NCDOT's long-standing plans to level this neighborhood have prevented private funds and government funds, particularly Community Development funds, from being invested in the community. This deprivation has continued over the last twenty years. Such actions by NCDOT are violative of complainants rights under Title VIII.

D. The past and present employment practices of NCDOT regarding the planning and research staff of the Division of Highways and the selection of members of the Highway Commission and Board of Transportation excluded and still exclude blacks and this practice excludes the interest of black people from the highway decision-making process. This is violative of 23 CFR 21.7(c)(3) which prohibits such employment discrimination.

E. The refusal of NCDOT to gather data to update the thoroughfare plan, to integrate the East/West Expressway proposal into an updated thoroughfare plan, to study alternatives, and to make funding available for such

alternatives perpetuates the past discriminatory employment and facility location actions and accentuates the present such actions of NCDOT. These actions are in complete opposition to the affirmative action requirements of 23 CFR 21.5(b)(7). When as in this case, past discriminatory actions have been committed, a recipient is required to remove or overcome these effects. In this case, this can only be done if NCDOT is prohibited from constructing the East/West Expressway through the Crest Street Community.

WHEREFORE, based on the claims and facts set forward, complainants pray for relief from the Department of Transportation as follows:

1. That NCDOT be prohibited from planning or constructing the proposed extension of the East/West Expressday through the Crest Street Community.

2. That NCDOT be required to offer funding for alternatives which would not destroy the Crest Street Community;

3. That NCDOT be required to correct the discriminatory practices in employment and the selection of members of the Board of Transportation;

4. That NCDOT be required to take necessary steps to eliminate the discriminatory location of facilities and that such steps be monitored by DOT;

5. That DOT withdraw the 3C certification for the Durham urban area and order and monitor the implementation of a corrective program;

6. That DOT withdraw approval of the N.C. Action Plan and its implementation until corrective measures are completed by NCDOT;

7. That the Division Administrator not approve the NCDOT draft EIS for this project until it is brought into compliance with the applicable statutes, regulations and memorandum;

8. That DOT conduct hearings in Washington, D.C. with all named defendants within sixty (60) days after receipt of this complaint in order that the claims herein stated may be resolved; and

9. That DOT grant any other administrative relief to which complainants are entitled.

NORTH CENTRAL LEGAL ASSISTANCE PROGRAM

Attorneys for Complainants
Durham, North Carolina

s/ By Michael D. Calhoun

s/ By Alice A. Ratliff

EXHIBT NO. 1
(to Exhibit A)

November 7, 1977

MEMORANDUM TO: W. F. Caddell, Jr.
FROM: R. F. Smith
SUBJECT: Durham, Anderson Street Connector

On September 6, 1977 the Durham City Council passed a resolution requesting the N. C. Department of Transportation extend Anderson Street from Hillsborough Road to Oakland Avenue as part of the East-West Freeway project (see figures 1 & 2.)

The Trent Drive-Oakland Avenue corridor presently serves as a major access route from the rsidential area north of Hillsborough Road to Duke University and V. A. Hospital which are major employment centers.

With the present street system, Trent Drive provides a continuous connection between the residential area and these employment centers crossing both Hillsborough Road and the Southern Railway tracks. The present design of the East-West Freeway (Figure 2) includes the termination of Trent Drive. Therefore without the Anderson Street extension, there would not be a continuous connection from the residential area north of Hillsborough Road to the area south of the railroad. Anderson Street is the only street that crosses both the railroad and the freeway between Erwin Road and Hillandale Road. Anderson Street crosses the railroad tracks at grade while both Erwin Road and Hillandale Road are grade separated.

The Anderson Street extension is shown on the mutually adopted Durham Thoroughfare Plan, being designated a minor thoroughfare.

The Hillandale Road extension, which is part of the proposed freeway plans, will provide a new connection between the residential area north of Hillsborough Road and the Duke V. A. Hospital complex. It will serve the western part of the residential area, and will relieve some of the traffic burden now using Trent Drive.

In order to eliminate two five point intersections, the Traffic Engineering Division of the City of Durham proposed the realignment of Warner Street and Alabama Avenue as shown on Figure 1. In addition, Anderson Street should be widened to 40 feet face to face of curbs between Main Street and Hillsborough Road. Approximately half of this widening is proposed to be done by the freeway project even if the extension is not built. The proposed cross section for the extension is 40 feet face to face of curbs also.

The total cost of the Anderson Street extension, the widening of Anderson Street, and the realignment of Warner Street and Alabama Avenue is estimated to be $326,100. The estimated construction cost is $74,600 and the estimated right-of-way cost is $251,500.

The extension of Anderson Street would necessitate the relocation of 3 businesses and 1 residence, and the realignment of Warner Street would relocate 1 additional residence.

The extension of Anderson Street and the related improvements to the street system of the area can be han-

dled either as part of the East-West Freeway project or as a separate project. The extension of Anderson Street could be considered as a logical part of the freeway project since it replaces Trent Drive as the north-south artery for this area. If the extension is made part of the freeway project, it would displace businesses and residences and affect a neighborhood not previously affected by the freeway. By involving an additional neighborhood in the freeway project there is the possibility of increasing the controversy of the entire project. The project is already controversal enough without adding any additional opposition.

Therefore, it is my opinion the Anderson Street Extension and related improvements should be handled as a separate project.

Please let me know as soon as a decision is made on this matter because we plan to begin our public meetings this month.

RFS/dc

EXHIBIT No. 2
(To Exhibit A)

RELOCATION REPORT—*E.I.S. CORRIDOR, DESIGN*
(Circle* type report)

N.C. Board of Transportation
Relocation Assistance

Instructions: Prepare an original and 2 copies

Work Order Number—9.8050560; F.A. Project Number .....; County, Durham; Alternate 1 of 1; Alternates .....

Description of Project: Durham East-West Freeway (Crest Street Area); N.C. Dept. of Transportation.

ESTIMATED DISPLACEES

Type of Displacees	Owners	Tenants	Total	Minority
Individuals	#3	17	20	20
Families	39	68	107	107
Businesses	0	1	1	1
Farms	0	0	0	0
Non-Profit Organizations	1	0	1	1

Income Level			Value of Dwelling		
0-4M	4-8M	8+M	60.00 0-6M	110.00 6-15M	111.00+ 15+M
10	7	3	0	6	14
28	66	13	0	45	62

DSS DWELLINGS CURRENTLY AVAILABLE

	60.00 0-6M	110.00 6-15M	111.00+ 15+M
Sale	0	5	147
Rent	0	36	36

*Circled answers are indicated in italic.

ANSWER ALL QUESTIONS AND EXPLAIN
ALL "YES" ANSWERS

1. Will project have significant impact *YES*—NO
2. Will project be disruptive to community *YES*—NO
3. Will community be cut off from services YES—*NO*
4. Will neighborhoods be separated YES—*NO*
5. Will special relocation services be necessary *YES*—NO
6. Will schools or churches be affected by displacement *YES*—NO
7. Will business relocation be detrimental to community YES—*NO*
8. Will business services still be available after project *YES*—NO
9. Have local officials, social agencies, housing officials, community groups been contacted *YES*—NO
10. Will relocation cause a housing shortage YES—*NO*
11. Source for housing available
12. Will additional housing programs be needed YES—*NO*
13. Should Last Resort Housing be considered YES—*NO*
14. Is there a significant number of large families, disabled, elderly, etc. on project YES—*NO*

ANSWER THESE ALSO FOR DESIGN

15. Will public housing be needed for project YES—NO
16. Is Public Housing available YES—NO

17. Is it felt there will be adequate DSS housing available during relocation period YES—NO
18. Will there be a problem of housing within financial means YES—NO
19. Are suitable business sites available (List Source) YES—NO
20. Number months estimated to complete relocation

RELOCATION AGENT
s/ Alfred F. Morris

DATE
6/26/78

FORM 15.4
Rev. 3-77

REMARKS:

(Number Response)

1. & 2. It is felt that the project will have significant impact and will be disruptive to the Crest Street Area. The project will cause displacement of a large number of low income Blacks and will nearly cause the displacement of the whole community. It is also felt that the highway project will inable the displacees the opportunity to live in safe, decent, and sanitary housing for the first time.

5. It is felt that as the results of the large number of low income families and individuals, special services from the social services in in house-keeping and money management.

6. The project will cause the displacement of one church which appears to serve as a leader for community activities.

8. The East-West Freeway will not be disruptive or adversely affect the businesses offering services to the community.

9. Mr. Ben T. Perry, Director of the Redevelopment Commission of the City of Durham; Patricia Wearing of the

Durham Housing Authority; Mr. J. H. Clark, Chairman of the Durham Board of Realtors; and Mr. Robert Peck, Durham's City Hall were contacted in reference to the Durham East-West Freeway and it appeared that the consensus opinion is that the Freeway is greatly needed to aide in the flow of traffic from the Duke-V.A. Hospitals.

11. The Durham Housing Authority has under management approximately 2400 housing units with a normal turnover rate of 8 to 10 per cent, from the local realtors and news papers it is apparent that adequate housing is and will be available.

APPROVED — DATE
s/ Lewis Allen — 7/6/78

Original and 1 copy—State Relocation Agent
2 copy—Area Relocation File

EXHIBIT B

OFFICE OF THE SECRETARY OF
TRANSPORTATION
WASHINGTON, D.C. 20590

FEB. 20, 1980

Mr. Thomas W. Bradshaw, Jr.
Secretary of Transportation
State of North Carolina
Raleigh, North Carolina 27611

Dear Mr. Bradshaw:

I am writing concerning our investigation of the Crest Street Community's complaint about the location of the proposed East-West Expressway in Durham as presented in the Draft Environmental Impact Statement. This complaint was filed with us pursuant to Title VI of the Civil Rights Act of 1964 which prohibits discrimination based on race, color or national origin in Federally-assisted programs.

The additional information you submitted in your letter of December 5, 1979 responding to my previous letter has been reviewed.

I understand that you have not made a final decision with regard to the preferred alternative location of the proposed highway. Nevertheless, I believe it important to inform you of our preliminary judgments concerning the alignment proposed in the Draft EIS and challenged by the Title VI complaint, so that you may take them into account in your future planning.

On the basis of all of the information that has been furnished to us, our preliminary conclusions are as follows:

(1) The proposed alignment which shows an interchange displacing virtually the entire Black community along Crest Street would entail extremely adverse and disproportionate impacts on Blacks as compared with Whites in the surrounding area in terms of displacement, relocation, and general community disruption.

(2) The identification and discussion of alternatives in your submitted materials, principally the Draft EIS appear inadequate as justification for such extreme, adverse racial impacts in light of transportation requirements.

(3) We are advised by John Hassell that there is at least one apparently reasonable and prudent alternative not explored in any of the present alternative analyses that would involve substantially less adverse impact on the Crest Street community and still respond to your transportation requirements.

In view of the above preliminary judgments, we find reasonable cause to believe that the construction of the Expressway along the alignment proposed in the Draft EIS would constitute a prima facie violation of Title VI and, in particular, Section 21.5(b)(3) of our Departmental Title VI regulation which provides:

> "In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part." -49 CFR 21

John and I will be happy to discuss this matter with you.

Sincerely,

ORIGINAL SIGNED BY
Ellen Feingold
Director of Civil Rights

cc: Michael Calhoun, Esq.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DSTRICT OF
NORTH CAROLINA
DURHAM DIVISION

File No. C-352-D-72

ECOS, INC.; DREW DIEHL; ASSOCIATED STUDENTS OF DUKE UNIVERSITY; STEVE SCHEWEL and HENRY BECK, Members of Associated Students of Duke University; and JOHN ROBERTSON,

Plaintiffs

v.

CLAUDE S. BRINEGAR, Secretary of the United States Department of Transportation; T. J. MORAWSKI, Division Engineer, Federal Highway Administration; McLAUCHLIN D. FAIRCLOTH, Commissioner, North Carolina State Highway Commission; W. F. CADDELL, JR., Planning and Research Engineer, North Carolina State Highway Commission; and NELLO TEER COMPANY, A Corporation,

Defendants

CREST STREET COMMUNITY COUNCIL, INC. and WILLIE PATTERSON, Applicants for Intervention

MOTION TO INTERVENE

CREST STREET COMMUNITY COUNCIL, INC. and WILLIE PATTERSON, proposed plaintiffs-intervenors (hereinafter intervenors), respectfully move the Court pursuant to Rule 24(a)(2) and Rule 24(b)(2) of the Federal Rules of Civil Procedure for an Order allowing them to intervene as plaintiffs in the action identified above. Their proposed complaint is attached. The grounds in support of this motion are as follows:

1. The intervenors have a direct interest in this action.

2. The intervenors' ability to protectect their interests will be impaired if intervention is not allowed.

3. The interests of the intervenors may not be adequately represented by the plaintiffs in this action.

4. Intervenors' claims and the claims of the present plaintiffs present common questions of law and fact.

5. Allowing intervention will not unduly delay or prejudice the adjudication of the rights of plaintiffs and defendants in this action.

6. The existing case in which intervention is sought has been dormant for several years and thus the department structures and individual officials have changed. If the substitution of the current proper officials is not made prior to intervention, intervenors will move for such substitution after intervention. Also, defendant Nello Teer Company, a highway contractor, has completed the section of the Expressway in dispute when this case was previously active and no contract has been let for the presently proposed extension of the Expressway. Plaintiffs Crest Street Community Council, Inc. and Willie Patterson have no claims against Nello Teer Company at this time.

7. This motion for intervention is timely.

WHEREFORE, intervenors request that they be permitted to intervene in this action as of right pursuant to Rule 24(a)(2), or. in the alternative, that they be allowed permissive intervention in accordance with Rule 24(b)(2).

This the 15 day of October, 1982.

NORTH CENTRAL LEGAL ASSISTANCE PROGRAM
Durham, North Carolina
ATTORNEYS FOR INTERVENORS

s/ By Michael D. Calhoun

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA
DURHAM DIVISION

File No. C-352-D-72

CREST STREET COMMUNITY COUNCIL, INC. and WILLIE PATTERSON,

Plaintiffs-Intervenors

ECOS, INC.; DREW DIEHL; ASSOCIATED STUDENTS OF DUKE UNIVERSITY; STEVE SCHEWEL and HENRY BECK, Members of Associated Students of Duke University; and JOHN ROBERTSON,

Plaintiffs

v.

CLAUDE S. BRINEGAR, Secretary of the United States Department of Transportation; T. J. MORAWSKI, Division Engineer, Federal Highway Administration; McLAUCHLIN D. FAIRCLOTH, Commissioner, North Carolina State Highway Commission; W. F. CADDELL, JR., Planning and Research Engineer, North Carolina State Highway Commission; and NELLO TEER COMPANY, A Corporation,

Defendants

COMPLAINT

INTRODUCTION

1. This is a complaint by a black neighborhood through its neighborhood organization and by a resident of the neighborhood to prevent its displacement and destruction by the unlawful and illegal extension of the Durham East/West Expressway by the North Carolina Department of Transportation with federal-aid highway funds.

PARTIES

2. Plaintiff-intervenor Crest Street Community Council, Inc. is a not for profit corporation, incorporated

under the laws of North Carolina and located in Durham, North Carolina. Its membership is composed of the residents of the Crest Street Community, a black neighborhood in the western part of Durham, North Carolina.

3. Plaintiff-intervenor Willie Patterson is a resident of the Crest Street Community. His residence lies in the right of way of the proposed extension of the East/West Expressway.

4. Defendants are officials of the United States Department of Transportation, Federal Highway Administration and the North Carolina Department of Transportation with the authority and responsibility to implement the highway construction programs under which it is proposed that the East/West Expressway be extended.

JURISDICTION

5. This Court has jurisdiction of the parties and subject of this action under 28 U.S.C. §§ 1331, 1337, 1361 and 1343(3) and (4).

FACTS

6. The Crest Street Community is a stable, low-income/moderate-income black community in west Durham. The neighborhood, which is more than 100 years old, is held together by family ties. An anthropological study of the Community, conducted and published by Duke University, found that the majority of residents in the neighborhood have lived in the Community for more than 20 years and had relatives in other households in the neighborhood. The Crest Street Community is the only remaining black neighborhood in west Durham.

7. The North Carolina Department of Transportation proposes to extend the Durham East/West Expressway from its current terminus at Erwin Road to U.S. 15-501.

8. The North Carolina Department of Transportation is proceeding with extension of the expressway as a federal-aid primary road project under 23 U.S.C. § 108. Seventy-five percent (75%) of the funding for the expressway would be federal funding.

9. The North Carolina Department of Transportation has issued a final Environmental Impact Statement for extension of the expressway and the Federal Highway Administration and the United States Department of Transportation have approved this Environmental Impact Statement.

10. The North Carolina Department of Transportation plans to begin extension of the expressway in this calendar year. However, no contacts have been put out for bid or let on this project.

11. Extension of the East/West Expressway as currently proposed by the North Carolina Department of Transportation would destroy the Crest Street Community and an interstate connecting freeway would be placed through the middle of the community, displacing move than half of the 200 households. The remaining households would face displacement pressure from commercialization and would be left in a noisy, polluted environment.

12. Each of the allegations in paragraphs one through eleven above are incorporated by reference in each of the following claims for relief.

FIRST CLAIM FOR RELIEF

13. Extension of the East/West Expressway would be done with the intent and effect of violating the civil

rights of the residents of the Crest Street Community in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.* and United States Department of Transportion Regulations, 49 C.F.R. 21.

SECOND CLAIM FOR RELIEF

14. The defendants are proceeding with extension of the East/West Expressway without providing plaintiffs requ ed relocation benefits, in violation of the Uniform Relocation Assistance and Real Properties Acquisitions Policies Act of 1970, 42 U.S.C. § 4601 *et seq.*

THIRD CLAIM FOR RELIEF

15. The expressway extension takes several park lands notwithstanding the availability of prudent and feasible and non-expressway alternatives and expressway corridors, in violation of 23 U.S.C. § 138.

FOURTH CLAIM FOR RELIEF

16. The defendants have failed to prepare an adequate environmental impact statement, in volation of the National Environmental Policies Act, 42 U.S.C. § 4331 *et seq.*

FIFTH CLAIM FOR RELIEF

17. The defendants are proceeding with extension of the expressway without having engaged in a continuing comprehensive planning program as required by 23 U.S.C. § 128.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

A. Issue a preliminary and permanent injunction against defendants, their successors in office and their agents or employees and all other persons in concert with them, prohibiting them from proceeding with the extension of the East/West Expressway through the Crest Street Community Nighborhood.

B. Declare on behalf of plaintiff that the acts and practices of the defendants in proceeding with the extension of the East/West Expressway through the Crest Street Community Neighborhood violate Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, 49 C.F.R. § 21, the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, 23 U.S.C. § 138, and 23 U.S.C. § 128.

C. That the defendants be ordered to pay plaintiffs' attorney fees and costs.

D. For such other and further relief to which the plaintiffs are entitled.

This the — day of ————, ——.

NORTH CENTRAL LEGAL ASSISTANCE PROGRAM
Durham, North Carolina
ATTORNEYS FOR CREST STREET COMMUNITY COUNCIL, INC. and WILLIE PATTERSON

s/ By Michael D. Calhoun

EXHIBIT D

NORTH CAROLINA
DURHAM COUNTY

FINAL MITIGATION PLAN

This is an agreement between City of Durham (hereafter "City"), the North Carolina Department of Transportation (hereafter "NCDOT") and the Crest Street Community Council, Inc. (hereafter "Council"). The date of this agreement is December 15, 1982.

PREAMBLE

The City has requested, and it is planned by NCDOT, that the Durham East/West Expressway be extended to U.S. 15-501 Bypass. Extension of the Expressway will displace much of the Crest Street Community (hereafter "Community"), a long-standing cohesive black neighborhood. For many years the Community opposed the extension of the Expressway and in 1978, filed an Administrative Complaint with the United States Department of Transportation (hereafter "USDOT") alleging, *inter alia,* that extension of the Expressway would violate their civil rights under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(b), and Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.* In February, 1980, the Civil Rights Office of USDOT issued a preliminary finding that extension of the Expressway as planned would violate the civil rights of the residents of the Community. In addition the USDOT urged NCDOT, the City and the Council to meet to determine if their disagreements could be conciliated and resolved. Through negotiations among representatives of the City NCDOT, Federal Highway Administra-

tion (hereafter "FHWA") and the Council, a plan was developed for specified steps to be taken to reduce adverse impacts on the Community, which may result from the extension of the East/West Expressway under the proposal designated as "Expressway Alternative F-6 Revised." The Council agreed to withdraw its Administrative Complaint if the City and NCDOT agreed to implement these mitigation efforts. The City was originally required to contribute a significant share of right-of-way acquisition costs for the East-West Expressway Project. NCDOT then released the City from its obligation to pay an estimated 2.75 million dollars towards right-of-way costs of the Expressway, on the condition that the City participate in the mitigation efforts. On February 25, 1982, the City Council of the City of Durham approved a mitigation concept which contained the mitigation efforts developed by the representatives of the City, NCDOT, FHWA and the Council.

An injunction prohibiting NCDOT and USDOT from proceeding with construction of the extension of the Expressway, entered by the Federal District Court for the Middle District of North Carolina in the case of *ECOS, Inc., et al v. Secretary of U. S. Department of Transportation,* et al, C-352-D-72; currently remains in effect.

The City, NCDOT and the Council agree as follows:

1. *Implementation of Mitigation Plan.* The City and NCDOT shall implement the mitigation plan prescribed by this agreement within three years of the court's final dissolution of the injunction in the case of *ECOS, Inc., et al v. Secretary of U. S. Department of Transportation, et al,* C-352-D-72 (hereafter "the ECOS case").

2. *Dissolution of Injunction.* The Council shall support dissolution of the injunction in the ECOS case. This agreement is void if the court fails to dissolve said injunction.

THE MITIGATION PLAN

I. *Redevelopment Plan*

3. *Preparation of Redevelopment Plan.* The City shall prepare and consider adopting a Redevelopment Plan for the area shown on Exhibit C. The primary objectives of the redevelopment plan would be to provide replacement housing for Crest Street Community Residents and to establish a residential community with long term viability.

4. *Contents of Redevelopment Plan.* The Redevelopment Plan shall provide for the following:

a) A neighborhood park which shall include at least a baseball field, a lighted basketball court, picnic facilities, play apparatus, walkways, a water fountain and toilet facilities (as specified on Exhibit D);

b) A community center to be located in the auditorium of the Hickstown Elementary School.

c) Landscaping around the Duke Power Company substation which is presently located on Crest Street, in order to help screen the substation;

d) A site for a community store;

e) The site plan shown in Exhibit D.

5. *Consideration of Redevelopment Plan.* The parties recognize that the City must comply fully with the requirements of the Urban Redevelopment Law, G.S. 160A-

500 et seq, in order for the City to adopt and execute a redevelopment plan. Therefore, this agreement shall become void if a Redevelopment Plan which conforms to this agreement is not approved by the City on or before April 5, 1983 or if NCDOT determines within thirty (30) days of April 5, 1983 the Redevelopment Plan is not acceptable and rescinds the Municipal Agreement. The City agrees to consult with NCDOT and the Council prior to taking final action on such plan (including the site plan prescribed in paragraph 4 (e)) so that the views of NCDOT and the Council may be fully presented during the City's consideration of such redevelopment plan.

6. NCDOT and the City shall acquire all property in the Crest Street Neighborhood Area (which area is shown on Exhibit B) which may be necessary for the implementation of this agreement and the redevelopment plan described in paragraphs 3, 4 and 5 of this agreement. The responsibilities of NCDOT and the City for such property acquisition shall be prescribed in a Municipal Agreement (hereafter "Municipal Agreement") which shall be executed by and between NCDOT and the City contemporaneously with this agreement.

II. *Last Resort Housing*

7. *Basis for Last Resort Housing.*

a) The parties agree that the extension of the East/West Expressway cannot proceed unless a reasonable mitigation plan is developed which is acceptable to all of the parties. Since one of the primary objectives is to relocate the Community "as a community" and sufficient housing to accomplish this

objective is not available in the City of Durham, then the provision of last resort replacement housing is necessary to accomplish the desired end result.

b) The Federal authority and mechanism for last resort housing is Section 206(a) of P.L. 91-646 (42 U.S.C. 4601-4655, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970). The State authority and mechanism for last resort housing is N.C.G.S. 133-10.1.

c) In order to accomplish the purposes of this agreement, NCDOT, the City and the Council agree that Community residents who are displaced by acquisition of property for the East-West Expressway and Fulton Street Redevelopment Areas shall be entitled to all the relocation assistance benefits (including last resort housing benefits) prescribed by Article 2 of Chapter 133 of the North Carolina General Statutes and implementing NCDOT regulations and procedures, as provided in this agreement.

8. *Last Resort Housing Provided.* The responsibilities of NCDOT and the City for providing relocation assistance are prescribed in the Municipal Agreement.

9. *Owner-Occupants.*

a) NCDOT and the City agree, subject to the limitation prescribed in paragraph 15, to pay to any displaced person who is displaced from a dwelling located within the boundaries of the Crest Street Community as shown on Exhibit B, which dwelling is actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of

negotiations for the acquisition of such dwelling, the assistance prescribed in this paragraph 9; provided, however, that such displaced person shall purchase and occupy a replacement dwelling which is decent, safe and sanitary not later than the end of the one-year period beginning on the date on which he receives final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date:

(1) A last resort housing relocation assistance payment computed as follows:

(a) NCDOT will obtain a firm bid from a qualified contractor for replacement of the persons existing house and garage, if any, and any improvements required to bring the house into compliance with the Housing Code of the City of Durham;

(b) To the amount of the bid obtained under 1.(a) above shall be added the sum of $3,000, which shall be an allowance for a building lot;

(c) From the sum of 1.(a) and (b) above shall be subtracted the amount of the fair market value of the person's existing house, lot and garage (if any) but excluding any outbuilding, other than a garage, and extraordinary landscaping: the resulting amount is the payment required under this subparagraph (a) (1); and,

(2) A payment to offset any additional mortgage cost which may result from purchase

of a comparable replacement dwelling: this payment shall be determined in the manner prescribed by G.S. 133-9(a) (2).

b) The payments prescribed in subparagraph (a) of this paragraph are in addition to the payment of fair market value for the property acquired from such displaced person by NCDOT and/or the City.

c) The City and NCDOT agree to make available to any person described in subparagraph (a) of this paragraph, one lot located in the West Fulton Street Redevelopment Area, which area is shown on Exhibit E, at a cost to such person of $3,000; provided that the lot is purchased for the purpose of constructing a replacement house and said replacement house is subsequently constructed and occupied by such displaced person. Persons qualifying for purchase of such lots under this paragraph shall have priority for such purchase over all other persons. The priority of such persons qualifying for lot purchases under this paragraph shall be determined as to each other in the manner prescribed in paragraph 13 of this agreement.

d) It is understood by the parties to this agreement that the money to be paid as assistance to displaced persons under subparagraph (a) of this paragraph shall be held by NCDOT and shall be applied to the purchase of a house for such displaced persons pursuant to the requirements of subparagraph (a) of this paragraph. The assistance payable under subparagraph (a) is limited to the amount required for the purpose of purchasing a comparable replacement

house for such displaced person. Such displaced person may use the benefits payable under subparagraph (a) to purchase any house, provided the house is decent, safe and sanitary. If the cost of the replacement house exceeds the amount available to such displaced person under subparagraphs (a) and (b) of this paragraph, then such displaced person shall be responsible for paying such excess amount; if the cost of the replacement house is less than the amount available to such displaced person under subparagraphs (a) and (b) of this paragraph, then such excess amount shall belong to NCDOT. NCDOT agrees to arrange for the construction of a replacement house by contracting with a builder and making progress payments to the builder during construction provided however that the displaced person shall request such assistance from NCDOT and shall enter a suitable contract with NCDOT for the purchase of such house.

e) In lieu of receiving assistance under subparagraphs (a), (c) and (d) of this paragraph, any displaced person qualifying for such assistance may elect to participate in the program for tenants which is described in paragraph 11. It is understood that such displaced person may be assigned a lower priority for such tenant program than other persons qualifying for such program. The assignment of priority shall be made pursuant to paragraph 11(e) (2) and (3) of this agreement.

f) Every displaced person described in subparagraph (a) of this paragraph shall have first

priority to purchase the dwelling purchased from him by NCDOT and/or the City.

10. *Tenants.*

a) The City and NCDOT agree, subject to the limitation prescribed in paragraph 15, to pay to or for any displaced person displaced from any dwelling located within the boundaries of the Community as shown on Exhibit B, which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling, the assistance prescribed by this paragraph 10, provided however, any person receiving any benefit prescribed under paragraph 9 of this agreement, except subparagraph 9(b), shall not be eligible to receive the assistance prescribed under this paragraph. The assistance prescribed by this paragraph is a last resort housing relocation assistance payment equal to the difference between the rent currently being paid by such displaced person or 25% of such displaced persons' gross income, whichever is less, and the rent (excluding utilities) for a comparable dwelling in the new Section 8 townhomes located on Crest and Bass Streets, presently known as the Crestview Apartments (hereafter "Crestview Apartments"); provided, however, if the comparable dwelling is a size other than a two or three bedroom unit in the Crestview Apartments, then the rent for the comparable dwelling shall be calculated by the following formula:

$$R = S \times \frac{T}{U}$$

Where: *R* is the rent for the comparable unit,

S is the rent applicable to the comparable unit derived from the rent schedules (known as fair market rent schedules) of the United States Department of Housing and Urban Development (hereafter "HUD") for the City of Durham,

T is the rent for the dwelling unit in the Crestview Apartments which is nearest in size to the comparable unit, and

U is the rent for the nearest size comparable dwelling, according to the HUD fair market rent schedules.

The payment prescribed by this paragraph shall cover a period of 48 months and shall be based upon rents or rent schedules in effect at the time the person receiving such payment is displaced. The cost of utilities shall be excluded from the calculation of the payment prescribed by this paragraph.

b) The term "comparable dwelling", when used to compute the maximum benefit in paragraph 10(a), means a dwelling with the same number of bedrooms as the dwelling from which the person receiving the assistance prescribed by this paragraph is displaced, or a dwelling with a sufficient number of bedrooms to meet the needs of the displaced persons' family under applicable NCDOT regulations, whichever is larger.

11. *Subsidized Rental Dwellings.* The City and NCDOT agree, subject to the limitation prescribed in paragraph 15, to make subsidized housing available to dis-

placed persons who qualify for assistance under paragraph 9(e) or paragraph 10 of this agreement in the manner provided in this paragraph:

a) The City and the Council agree to exercise their rights under an existing contract with the developer of the Crestview Apartments to insure the availability of 45 dwelling units in such apartments for such displaced persons.

b)(1)(i) The City and NCDOT agree to assist the Council in filing an application with the federal government under Section 202 of the Housing Act of 1959, as amended, whereby the Council may receive a federal loan under such Act for the purpose of purchasing and developing the building currently known as the Hickstown Elementary School (hereafter the "Hickstown School") for rental housing (with individual cooking facilities), primarily for the elderly.

(ii) The City agrees to make a grant to the Council in an amount not to exceed $15,000 which grant shall be used by the Council for professional fees and other costs connected with the filing and processing of the application.

(iii) Further, if the federal government approves the application for the Sec. 202 loans the City shall make a grant to the Council in an amount equal to ½ of 1% of the amount of the HUD allowable project cost, provided however, said grant shall not exceed $7500.

(iv) Further, the City shall provide a grant to the Council in an amount equal to the difference

between the sum of the amount received from HUD under the Sec. 202 loans and the grant provided by the City pursuant to subparagraph (b)(1)(iii) of this paragraph and the costs of the acquisition and rehabilitation of the building, provided, however, that the plans for rehabilitation of the building shall be subject to review and approval by the City prior to the making of such grant.

(2) The City and NCDOT agree to assist the Community in filing an application with the federal government for rental subsidies through the moderate rehabilitation program under Section 8 of the Housing Act of 1937 as amended, in the event the federal government rejects the Council's Section 202 application (described in subparagraph b(1) above). The Council agrees that the purpose of such an application would be to purchase and develop the Hickstown School in the manner described in part (1) of this subparagraph. The City further agrees that upon the federal government's approval of said Section 8 moderate rehabilitation application, the City will make a loan, consistent with the City's Community Development Program to the Council in an amount equal to the difference between the cost of purchasing and developing said Hickstown School consistent with this subparagraph and the maximum amount obtainable by the Council from a lender, using said Hickstown School property and the rents therefrom as collateral, provided however, that the plans for rehabilitation of the building shall be subject to review and approval by the City prior to the making of such loan.

(3) The Council agrees to make rental units in such renovated Hickstown School available to the displaced persons described in this paragraph, consistent with subparagraph (e)(2) and (3) of this paragraph, should the Council receive a federal loan or other assistance under parts (1) and (2) of this subparagraph (b).

c) The City agrees to acquire the three (3) quadraplex units located at the north end of Nassau Street and to make such units available for purchase by the Council consistent with the Urban Redevelopment Law, G.S. 160A-500 et seq. The City and NCDOT further agree to make available for purchase by the Council pursuant to the Urban Redevelopment Law from among the structures purchased by the City pursuant to the redevelopment plan described in paragraphs 3, 4 and 5 and from the structures purchased by NCDOT for the East-West Freeway right-of-way, a sufficient number of residential structures and lots to house displaced persons, who qualify for assistance under this paragraph and who are not housed in the Crestview Apartments, the Hickstown School or the said Nassau Street quadraplexes. The City and NCDOT agree to assist the Council to make a moderate rehabilitation rental subsidy application to the appropriate authorities pursuant to Section 8 of the Housing Act of 1937, as amended, for the purpose of acquiring and developing said quadraplexes and other structures as residential rental units. The City agrees that upon approval by the federal government of the Community's Section 8 application, the City shall make a loan to the Community, consistent with the

City's Community Development Program, in an amount equal to the difference between the cost of acquiring and developing said quadraplexes and other structures in a manner consistent with this subparagraph and the maximum amount obtainable by the Council from a lender, using said quadraplexes and other structures and the rents therefrom as collateral, provided however, that the plans for rehabilitation of the building shall be subject to review and approval by the City prior to the making of such loan.

d) It is the intention of NCDOT, the City and the Council that the rental assistance provided under this paragraph shall be at a sufficient level so that during the first four years of occupancy following relocation of a displaced person into the rental housing provided under subparagraphs (b) and (c) of this paragraph the rents (excluding utilities charges) charged such displaced person for such rental housing will not exceed the lesser of the tenants current rent or 25% of his gross income, and thereafter (for a 16 year period with respect to rental housing provided under subparagraph (b) and for an 11 year period with respect to rental housing provided under subparagraph (c)) the rents (including utilities charges) charged such displaced person for such rental housing shall not exceed 30% of his gross income adjusted pursuant to current Section 8 program regulations. If, because of a change in program, or otherwise, the level of rental assistance should fall below the foregoing level, the provisions of paragraph 16 would be applicable as to the difference.

e)(1) The City and NCDOT agree that they will require, as a condition of sale of any structure described in subparagraphs (b) and (c) of this paragraph which the City or DOT may subsequently purchase, that the purchaser(s) thereof shall agree to give priority to residents of the Community, as shown on Exhibit B, in the manner prescribed by parts (2) and (3) of this subparagraph. The Council agrees that, should it become the owner or developer of any such structure, it shall give priority to residents of the said Crest Street Community in the manner prescribed by parts (2) and (3) of this subparagraph.

(2) The priorities applicable to part (1) of this subparagraph are as follows for initial occupancy of such structures:

(i) First priority shall be given to current residents who live south of the railroad;

(ii) Second priority shall be given to current residents who live north of the railroad; and

(iii) Third priority shall be given to prior residents who resided in the community area for at least five years.

(3) During the life of any federal program of assistance described in subparagraph a, b and c of this paragraph, but subject to the priorities for initial occupancy set forth in part (2) of this subparagraph, priority shall be given to persons who have resided for at least five years in the area of the Community which lies south of the railroad, as shown on Exhibit B.

12. *Tenant-Home Owner Conversion.*

a) The benefits for persons described in paragraph 10, may be used by any such person as a downpayment toward the purchase of a replacement home, provided, however such payment of benefits under paragraph 10 shall not exceed the minimum amount required by a lender as a downpayment for such replacement home. In order to qualify for assistance under this paragraph, such person must obtain financing for the balance of such persons cost of a dwelling or replacement home. This provision is implemented pursuant to G.S. 133-10.1 and therefore no matching downpayment shall be required of such person under G.S. 133-10(2).

b) The City and NCDOT agree to provide the assistance prescribed in this subparagraph to any person who is entitled to receive assistance pursuant to paragraph 10 of this contract and who shall elect to purchase a dwelling in the West Fulton Street Redevelopment Area (shown on Exhibit E):

(1) The City shall, as soon as possible, exercise its best efforts to make reduced interest rate mortgages available for such persons by means of a local credit agreement between the City and local lenders, whereby such local lenders would make mortgage loans to such persons at reduced interest rates. It is understood that the North Carolina Housing Finance Agency (hereafter NCHFA) must approve the local credit agreement and that the interest on monies borrowed by the City to support such mortgages must qualify as tax-exempt under the Mortgage Revenue Bond Act of 1980, commonly referred to as the Ullman

Act, in order for the reduced interest rate mortgages to be made available. The provisions of paragraph 16, concerning substitution of program/benefits, do not apply to this paragraph 12(b)(1).

(2) The City and NCDOT agree to make available to any such person, one lot located in the West Fulton Street Redevelopment Area, which area is shown on Exhibit E, at a cost to such person of $3,000; provided that the lot is purchased for the purpose of constructing a replacement home and such replacement home is subsequently constructed and occupied by such displaced person. Such person shall be assigned a priority for such lot in the manner prescribed in paragraph 13 of this agreement. Furthermore, the City and NCDOT agree to make available for purchase a relocated, rehabilitated unit by financially qualified tenants described in paragraph 12(a) who relocate into the West Fulton Street Redevelopment Area in said units.

(3) (i) The City agrees to provide to any such person a deferred second mortgage, the proceeds of which shall be applied to the purchase of either a new or a relocated, rehabilitated existing dwelling in the West Fulton Redevelopment Street Area, provided, however, that such person shall first obtain from a lender a first mortgage in the maximum amount such lender will lend provided that the resulting housing costs do not exceed 25% of such persons' adjusted gross income. The deferred second mortgage shall be used as a supplement to the first mortgage and to the last resort housing relocation payment prescribed in sub-

paragraph (a) of this paragraph in the purchase of such dwelling.

(ii) The terms of the deferred second mortgage shall include the following: first, that no mortgage payment is required of the mortgagor until the property is sold at which time payment of the full amount shall be due; and second, no interest shall accrue on the mortgage until the date payment becomes due. The death of the mortgagor does not constitute a sale of the property. The lease of the property by the mortgagor or his successor in interest for five years or more, which term shall include all prior leases and any option to renew or extend such lease, constitutes a sale of the property. The City may require any lawful interest to be paid on the amount of the mortgage after the date payment of the mortgage amount is due.

(iii) The maximum amount of the deferred second mortgage available to each such person shall be determined as follows: for the purchase of a newly constructed dwelling, the maximum amount of the deferred second mortgage shall be $10,000 or the amount necessary to reduce such persons' housing costs to 25% of adjusted gross income, whichever is less; and, for purchase of a relocated, rehabilitated existing dwelling, the maximum amount of the deferred second mortgage shall be $6,000.00 or the amount necessary to reduce such persons' housing costs to 25% of adjusted gross income, whichever is less. Housing costs include mortgage payments, taxes and in-

surance on the property but exclude the costs of utility service. Adjusted gross income is computed by subtracting from the gross family income $600.00 for each dependent and an amount equal to 5% of the gross family income for a spouse residing in the residence.

(4) It is agreed that any person receiving a reduced interest mortgage loan under paragraph 12(b)(1) or a deferred second mortgage under paragraph 12(b)(3) for the purchase of a new or relocated, rehabilitated dwelling in the West Fulton Street Redevelopment Area shall, as conditions of receiving either or both of such mortgages, allow the City or NCDOT to contract for the construction of such dwelling and sign a contract with the City or NCDOT wherein such person agrees to purchase such dwelling.

(5) NCDOT and the City shall provide the following additional assistance to any such person who shall purchase a relocated, rehabilitated dwelling in the West Fulton Street Redevelopment Area. The City will provide to such person the rehabilitation assistance set forth in the City's Rehabilitation Financing Handbook. A copy of such handbook is Attachment 1 of this agreement. Prior to sale of any such dwelling to such person, the City shall rehabilitate the structure in accordance with the City's Rehabilitation Contractor's Handbook. A copy of such handbook is Attachment 2 of this agreement. NCDOT agrees to sell such relocated, rehabilitated dwelling to such person for an amount equal to the sum of the value, if any, of the structure (determined by NCDOT's retention value appraisal) plus the price of the lot, plus the

cost of moving the structure, plus the foundation cost, plus the purchaser's share of the rehabilitation cost, plus the cost of typical property improvements such as driveways, walkways and landscaping plus the cost of any other property improvements. NCDOT shall apply any relocation payments which such person is entitled to receive first to acquisition, lot, moving and foundation costs and thereafter to the such person's share of the rehabilitation costs.

III. *Other*

13. *Priority on Sale of Dwellings.* NCDOT, the City and the Community agree that, within a reasonable time after the execution of this agreement, they will establish, by subsequent agreement, objective criteria by which persons who are eligible to purchase lots and new or relocated, rehabilitated dwellings in the West Fulton Street Redevelopment Area shall be assigned priority in the purchase of such lots and dwellings. Such criteria shall be consistent with the provisions of paragraphs 9(c), 9(f) and 11(e) of this agreement.

14. *Noise Abatement Wall.* NCDOT shall construct, at its own cost, a noise abatement wall along the southernmost right-of-way limits of the East-West Freeway between LaSalle Street and the Hillandale-Fulton Street Connector and along the westernmost right-of-way limits of the Hillandale-Fulton Street Connector between the East-West Freeway and the northern property line of the Veterans Administration Hospital property. NCDOT shall also provide landscaping for the noise abatement wall.

15. *Assistance Limited.* Notwithstanding any other provision(s) of this agreement, residents of the Crest

Street Community who live north of the railroad and any prior resident of the community shall not be entitled to receive any assistance, payment, privilege or right under this agreement except that such persons may have the priority for occupancy in subsidized rental housing prescribed by paragraph 11(e)(2) of this agreement.

16. *Substitution of Program/Benefits.* If a program or benefit becomes unavailable, due to events such as termination of a federal program, a replacement program or benefit with at least equivalent benefits will be provided from another available source. This paragraph does not apply to the assistance prescribed by paragraph 12(b)(1).

17. *Non-displaced Homeowners.* The City agrees to provide to any person who owns and occupies a dwelling in the West Fulton Street Area, as shown on Exhibit E, whose dwelling is not acquired pursuant to the redevelopment plan described in paragraphs 3, 4 and 5, the rehabilitation assistance set forth in the City's Rehabilitation Financing Handbook (Attachment I of this agreement).

18. *Exhibits.* The Exhibits of the Municipal Agreement which are referred to in this agreement and attachments 1 and 2 are incorporated into this agreement by reference.

19. *Community Store.*

a) The City agrees to make available for purchase by or exchange with the owner of the community store presently located at 2304 Crest Street, consistent with the Urban Redevelopment Law, the site referred to in paragraph 4(d). NCDOT agrees to make available for purchase by said community store

owner a relocated structure for an amount equal to the sum of the value, if any, of the structure (determined by NCDOT's retention value appraisal). The store owner will be responsible for the cost of moving the structure, the foundation cost, the cost of any property improvements such as driveways, walkways and landscaping, and any other property improvements.

b) In lieu of the promises contained in subparagraph (a) of this paragraph and at the election of the said present community store owner, the City agrees to temporarily lease to said present community store owner, a relocated structure on the site described in paragraph 4(d), consistent with the Urban Redevelopment Law, for use by said present community store owner as a community store.

20. *Grant and Loan Contracts.* It is understood by the parties that the grants and loans referred to in paragraph 11 which will be made by the City to the Council are grants and loans made pursuant to G.S. 160A-456 and that said grants and loans must be for the purpose of providing for the rehabilitation of private buildings principally for the benefit of low and moderate income persons. Therefore, the City and the Council agree that such grants and loans shall be made subject to contracts to be executed between the City and the Council which contracts shall insure that the proceeds of the grants and loans shall be used by the Council consistent with G.S. 160A-456 and with this agreement and that the Council shall give a full accounting for the use of such funds.

21. *Prior Agreements.* This agreement supercedes all prior mitigation plans.

22. *Agreement Is Settlement.* This agreement is a settlement of a dispute. Each party to this agreement denies any legal liability to any other party. The Community does not waive any right it may have to attorney's fees arising out of said dispute. The City and DOT deny any liability for such attorney's fees.

CITY OF DURHAM

s/ By Barry L. Del Castilho
City Manager

ATTEST:
s/ Margaret M. Bruers
City Clerk

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
s/ By Billy Rose
State Highway Administrator

ATTEST:
s/ Brenda Grady
Secretary to the Board

CREST STREET COMMUNITY COUNCIL, INC.
s/ By Willie Patterson
President

ATTEST:

s/ By Betty J. Johnson
Secretary

(Corporate Seal Affixed)

EXHIBIT E

NORTH CAROLINA
DURHAM COUNTY
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
AND
CITY OF DURHAM
MUNICIPAL AGREEMENT

STATE PROJECT: 8.1414602

FEDERAL-AID Project: F-58-1(11)

THIS AGREEMENT, made and entered into this the 15th day of December, 1982, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as NCDOT, and the City of Durham, a municipal corporation. hereinafter referred to as the City.

WITNESSETH

WHEREAS, NCDOT and the City propose to enter into a formal agreement for the construction and improvement of certain streets and highways within the City; said improvements to consist of the construction of the East-West Freeway from US 15-501 Bypass to Swift Avenue, as shown on the attached drawing marked as Exhibit A, which is incorporated herein and made a part of this agreement; and,

WHEREAS, said construction is to be accomplished in accordance with the project plans and specifications to be prepared and adopted by NCDOT and approved by the City; said plans to be placed on file with NCDOT's office in

Raleigh, North Carolina with the proposed and existing right of way, control of access, and construction limits being shown on said project plans; and,

WHEREAS, the City Council of the City has approved the construction of said project in accordance with said proposed plans and specifications, and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out; and,

WHEREAS, in order to proceed with said project NCDOT, the City and the Crest Street Community Council, Inc. have jointly developed a Final Mitigation Plan, incorporated herein as Attachment 1, for the Crest Street Community; the boundaries of said community being shown on the attached drawing marked as Exhibit B; and,

WHEREAS, NCDOT is empowered by the General Statutes of North Carolina, Section 133-5 through Section 133-17 as amended to provide last resort housing when comparable housing is not available to allow for the project to proceed to actual construction; said last resort housing being necessary for the implementation of the mitigation plan.

NOW, THEREFORE, in consideration of the premises and the benefits accruing to NCDOT and the City as the result of the construction of Project 8.1414602, Durham County, it is agreed as follows:

1. The City except as set out in paragraph 2 hereinbelow, shall perform, or cause to be performed, the work hereinafter set out when the same shall become necessary by reason of the construction or relocation of streets or sidewalks, or by reason of the widening or improvement thereof; said work to be performed, or provisions made

therefor, in a manner satisfactory to NC DOT prior to beginning construction of Project 8.1414602:

(A) The City, without expense to NCDOT, shall exercise any rights which it may have under any franchise to effect all necessary changes, adjustments, and relocations of telephone, telegraph, and electric power lines, underground cables, gas lines, and other pipelines or conduits, or any privately or publicly owned utilities. Also, without cost to NCDOT or to any housemover that may be under contract with NCDOT, the City shall exercise said rights to cause the utilities to be adjusted or relocated to accommodate the moving of housing for the new Crest Street Community.

(B) The City, without cost or obligation to the Department, except as set out in paragraph 3 hereinbelow, shall lay, change, relay, repair, and otherwise adjust any City owned electric, water, sewer, and gas lines, and any other pipelines or conduits; and shall make all necessary adjustments to house or lot connections or services lying within the right of way or construction limits, whichever is greater, of the project, whether said connections or services are owned by the City or by others. The City shall make every effort to promptly relocate said City owned utilities and to make all necessary adjustments to said house or lot connections or services in order that NCDOT will not be delayed in the construction of the project.

2. NCDOT, where necessitated by the construction of Project 8.1414602, will make vertical adjustments of two (2) feet or less to the existing catch basins, manholes, drop inlets, meter boxes, and valve boxes at no expense to the City.

3. NCDOT will reimburse the City in accordance with the Municipally owned Utility Policy of the Department

contained within the official minutes of the July 2, 1964 meeting of the Board of Transportation, which policy is incorporated herein by reference.

4. In the event NCDOT's contractor performs for the City the relocations and adjustments of any City owned utility lines covered under paragraph 5 of this agreement, upon satisfactory completion of the construction of the relocations and adjustments, the City shall assume normal maintenance operations to said utility lines. Further, unless the City notifies NCDOT, in writing, to the contrary within thirty (30) days or more prior to acceptance of the project by NCDOT from its contractor following completion of construction, the City shall be deemed to have released NCDOT from any and all claims for damages in connection with adjustments made to its utility lines; and the City shall be deemed to have released NCDOT of any future responsibility for cost of maintenance of said lines.

5. It is further agreed that the following provisions shall apply regarding the City owned utilities covered in this agreement:

(A) The City obligates itself to service and maintain its facilities to be retained and installed over and along the highway within NCDOT's right of way limits in accordance with the mandate of the North Carolina General Statutes and such other laws, rules, and regu'ations as have been or may be validly enacted or adopted, now or hereafter.

(B) In the event it becomes necessary, due to any future highway construction or improvement, to adjust or relocate utilities which are being relocated at NCDOT's expense and which are crossing or otherwise occupying highway right of way, the non-betterment cost of same shall be borne by NCDOT. Non-betterment cost

is the cost of adjusting, relocating or replacing a utility line or facility with the same utility line or facility or with one of substantially the same capacity.

(C) If, at any time, NCDOT shall require the removal of or change in the location of the encroaching facilities which are being relocated at the City's expense, the City binds itself, its successors and assigns to promptly remove or alter said facilities, in order to conform to the said requirement, without any cost to NCDOT.

(D) The City agrees to relinquish its right in that portion of right of way vacated by its existing facilities and now absorbed within NCDOT's right of way.

6. NCDOT shall acquire the right of way necessary to provide a right of way of the width and length as called for in the plans and specifications for Project 8.1414602 to be approved by NCDOT and the City and placed on file with NCDOT; said right of way to be provided by NCDOT without any cost whatsoever to the City, except the City shall convey to NCDOT, without cost, any street right of way, easements or property currently owned by the City and located within the right of way for Project 8.1414602.

7. It is agreed between the parties hereto that a supplemental agreement shall be entered into for the purpose of establishing and maintaining traffic operating controls on Project 8.1414602 upon its completion.

8. The City shall prepare and consider adopting, pursuant to the requirements of Article 22 of Chapter 160A of the General Statutes (the Urban Redevelopment Law) a Redevelopment Plan consistent with the FINAL MITIGATION PLAN for the areas whose boundaries are shown on the attached drawing marked as Exhibit C. The pri-

mary objectives of said Redevelopment Plan shall be to provide replacement housing for the Crest Street Community residents and to establish a residential community with long term viability in accordance with the Site Plan For The Crest Street Neighborhood Relocation as shown on the attached drawing marked as Exhibit D which is incorporated herein and made a part of this agreement. Prior to final action thereon by the City said Redevelopment Plan shall be submitted to NCDOT's Manager of Project Management Branch, hereinafter referred to as NCDOT's Manager, for review and comment by NCDOT. Such review and comment shall be completed within thirty (30) days from the receipt by NCDOT of said Redevelopment Plan, unless by the mutual agreement of both parties, the time therefor be extended. If the Redevelopment Plan, as finally acted upon by the City, is not acceptable to NCDOT, or if no Redevelopment Plan is approved, NCDOT shall have the right to rescind within thirty (30) days of April 5, 1983 this agreement and Final Mitigation Plan.

9. Subsequent to the approval of the Redevelopment Plan by the City, the City shall prepare, at no cost to NCDOT, preliminary plans and specifications for the streets, sidewalks and utilities to be constructed by the City in accordance with the Site Plan For The Crest Street Neighborhood Relocation (Exhibit D). The City shall submit said preliminary plans and specifications, either as a single project or as several projects, to NCDOT's Manager for review and approval. Such review and approval shall be completed within thirty (30) days from the receipt by NCDOT of said plans and specifications, unless by the mutual agreement of both parties, the time therefor be extended.

10. NCDOT shall reimburse the City to the extent of sixty-two and four-tenths (62.4%) percent of the approved costs allowable for FHWA participation which are incurred by the City for all of the projects designated in paragraph 9 above. Said reimbursement shall be subject to the policies and procedures contained in Title 19A, Subchapter 5B, Section .0300 of the North Carolina Administrative Code which is incorporated in this agreement by reference as fully as if herein set out. Said reimbursements shall be made as follows:

(A) The City may bill the Department on a monthly basis for said reimbursable project costs by submitting an invoice, in quadruplicate, accompanied by a breakdown of items of construction. Proper supporting documentation shall accompany each invoice as may be required by NCDOT. Invoices for the items of construction shall be submitted to NCDOT's Manager and shall become due 30 days from receipt by him.

(B) The City shall submit a final itemized invoice listing all reimbursable project costs to NCDOT's Manager upon completion of construction of the project or projects. Said invoice shall be accompanied by a breakdown of all construction costs.

(C) Reimbursement for construction contract work shall be made on the basis of contract unit prices in the construction contract and any approved supplemental agreements.

(D) Reimbursement to the City for all invoices submitted shall be made upon approval of each invoice by NCDOT.

(E) The City agrees that it shall bear all costs of any item for which it is unable to substantiate actual costs or any costs which have been deemed unallowable.

11. The City's contract administration procedures shall be submitted to NCDOT's Manager for NCDOT'S review and approval prior to advertising for construction bids for any project designated in paragraph 9 above.

12. Prior to advertising any project designated in paragraph 9 above for construction bids, the City shall submit for approval by NCDOT the final plans, the total contract proposal and an estimate of the project costs to NCDOT's Manager. Bids received, along with proper documentation of City approval, shall be submitted to NCDOT's Manager for review and approval by NCDOT and the Federal Highway Administration prior to the contract being awarded by the City. Further, upon award of the contract, the City shall furnish to NCDOT's Manager seven (7) copies of the executed contract and seven (7) sets of plans. The City shall follow NCDOT regulations and Federal Highway Administration regulations pertaining to bid procedures in the award of the contract consistent with Article 8 of Chapter 143 of the General Statutes. Said Federal Highway Administration regulations are contained in Federal-Aid Highway Program Manual, Volume 6, Chapter 4, Section 1, Subsection 1 and Volume 6, Chapter 4, Section 1, Subsection 6; said policy being incorporated in this agreemnt by reference as fully as if herein set out.

13. The City shall construct, or cause to be constructed, any project designated in paragraph 9 above in accordance with the plans and specifications of said project or projects as filed with and approved by NCDOT.

During the construction of said project or projects designated in paragraph 9 above, the procedures set out hereinbelow shall be followed:

(A) The City shall perform or cause to be performed the necessary construction engineering, sampling and testing, and supervision required during construction of said project or projects.

(B) During construction of said project or projects, if any changes in the project plans are necessary, such changes must be approved by NCDOT's Manager or his designee prior to the work being performed.

(C) NCDOT's Manager or his designee and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of said project or projects during construction.

(D) Prior to the final approval and payment by NCDOT, said Manager, or his designee, and a representative of the Federal Highway Administration shall make a final inspection of the completed work.

(E) The City shall be responsible for insuring that the contractor complies with all of the terms of the contract and any instructions issued by NCDOT's Division Engineer for the Fifth Division as a result of any review or inspection made by said Division Engineer.

(F) Upon completion of said project or projects, the City shall furnish or cause to be furnished NCDOT's Fifth Division Engineer with a certification that contract administration has been accomplished in accordance with the City's procedures that have been approved by NCDOT.

The City shall also furnish certification that materials used in the construction meet the requirements as set forth in the contract.

(G) Upon completion of said project or projects, the City shall furnish NCDOT's Fifth Division Engineer with one complete set of As-Built Plans.

(H) The City shall be responsible for the establishment and maintenance of an accounting system for the project or projects and shall keep a work order system in such a manner as to show the nature of each cost making up the total costs and the source or sources of such costs. The accounting system and procedures which are established for the project or projects must be in accordance with generally acceptable accounting principles, and must be reviewed and approved by NCDOT's Fiscal Officer prior to beginning any work on the project.

(I) The City shall maintain records to document quantities for which the contractor is paid during any monthly estimate period.

(J) The City shall maintain all records that establish final documentation of quantities incorporated into said project or projects in accordance with established NCDOT procedures.

(K) All project records developed by the City that are not submitted to NCDOT shall be retained by the City for a period of three (3) years after the date of final payment.

(L) During construction of said project or projects, the City shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning

devices necessary for the protection of traffic in conformance with the 1978 edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways,* or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of the award of the contract or contracts.

(M) Failure on the part of the City to comply with any of the provisions of this paragraph 13 shall be grounds for NCDOT to withdraw participation on any or all of the items of work involved.

14. During the performance of the work on any project designated in this contract, the City and NCDOT and all its contractors shall comply with "Title VI of the Civil Rights Act of 1964" as set forth in Attachment 2, and the Minority Business Enterprise Requirements set forth in Attachment 3.

15. The City shall administer the construction contracts of all projects designated in paragraph 9 above at no cost to NCDOT.

16. The City and its contractor or contractors for any project designated in paragraph 9 above shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this agreement. Further, the City shall make such materials available at its office and shall require its contractor or contractors to make such materials available at its office or offices at all reasonable times during the contract period, and for three (3) years from the date of final payment by NCDOT under this agreement, for inspection and audit by NCDOT, the

Federal Highway Administration, or any authorized representatives of the Federal Government.

17. Upon completion of the street system in the relocated Crest Street Neighborhood, as shown on Exhibit D and referred to in paragraph 9 above, the City shall be responsible for the establishment and maintenance of traffic operating controls on said street system. Said controls shall be in accordance with the 1978 edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways,* or any subsequent revision of the same, published by the Federal Highway Administration.

18. The City shall be responsible for the proper maintenance of the completed improvements referred to in paragraph 9 above and for the costs thereof.

19. The City agrees to bear the costs of the neighborhood park, the community center, the landscaping, and the site plan required to be provided under paragraph 4 of the FINAL MITIGATION PLAN; the costs of the grants, loans, and assistance in filing applications required to be provided under paragraph 11 of the FINAL MITIGATION PLAN; the costs of providing deferred second mortgages required to be provided under paragraph 12 of the FINAL MITIGATION PLAN and the costs of rehabilitation assistance (in excess of the amount provided by relocation assistance benefits) required to be provided under paragraph 12 and paragraph 17 of the FINAL MITIGATION PLAN. NCDOT agrees to bear the costs of the noise abatement wall and its landscaping required to be provided under paragraph 14 of the FINAL MITIGATION PLAN.

20. The City agrees to bear the costs of relocation assistance to all displacees living in the East Fulton Street Redevelopment Area and thirty-seven and six-tenths percent (37.6%) of the costs of relocation assistance to all displacees living in the West Fulton Street Redevelopment Area, which areas are shown on Exhibit E, consistent with and subject to the limitations of N.C.G.S. 133-8, 9, and 10. NCDOT agrees to bear the costs of relocation assistance, including last resort housing under N.C.G.S. 133-10.1, for all displacees living within the right of way of the East-West Expressway and its interchange with Fulton Street in the Crest Street Urban Renewal Area. NCDOT further agrees to bear the costs of relocation assistance, including last resort housing benefits under N.C.G.S. 133-10.1, for all displacees living within the East and West Fulton Street Redevelopment Areas, over and above the costs agreed to be borne by the City as hereinbefore set out. NCDOT agrees to administer the relocation assistance program prescribed herein, including last resort housing benefits pursuant to N.C.G.S. 133-10.1, and the City agrees to reimburse NCDOT for all direct costs of its administration of relocation assistance to displacees living in the East Fulton Street Redevelopment Area and thirty-seven and six-tenths percent (37.6%) of the direct costs of its administration of relocation assistance to displacees living in the West Fulton Street Redevelopment Area.

21. NCDOT shall acquire through negotiation or condemnation the property located within the right of way for the East-West Freeway Project, except to the extent such right of way may be required pursuant to paragraph 22 of this agreement. NCDOT, acting on behalf of the City,

shall acquire through negotiation the property located within the Crest Street Urban Renewal Area which lies outside of said right of way; subject, however, to be reimbursed by the City as follows:

(A) The City shall reimburse NCDOT to the extent of one hundred (100) percent for all expenditures which the Department may make in acquiring or on account of the property located within the Crest Street Community boundaries east of Fulton Street and outside the right of way designated for Project 8.1414602. Said property is designated at the East Fulton Street Area and is shown on the attached drawing marked Exhibit E, which is incorporated herein and made a part of this agreement. The cost of acquiring said property shall include, but not be limited to, the cost of the property, utilities, the cost of relocation assistance and payments (excluding, however, the cost of last resort housing benefits provided under N.C.G.S. 133-10.1), and all administrative costs such as appraisal fees, negotiation costs, relocation assistance and record keeping. For those parcels of property which are partially inside the right of way and partially outside the right of way in the East Fulton Street Area, the cost to the City for each parcel of said property shall be computed based on the total cost, as defined hereinabove within this paragraph, of said parcel multiplied by the ratio of the land area of said parcel outside the right of way to the total land area of said parcel.

(B) The City shall reimburse NCDOT to the extent of thirty-seven and six-tenths percent (37.6%) for all expenditures which NCDOT may make in acquiring or on account of the property located within the Redevelopment Area boundaries west of Fulton Street and outside

the right of way designated for Project 8.1414602. Said property is designated as the West Fulton Street Area on Exhibit E. The cost of acquiring said property shall include, but not be limited to the cost of the property, the cost for removal therefrom of all obstructions of any kind or character necessary for the implementation of the mitigation plan, the cost of relocation assistance and payments (excluding, however, the cost of last resort housing benefits provided under N.C.G.S. 133-10.1), and all administration costs such as appraisal fees, negotiation costs, relocation assistance and record keeping. For those parcels of property which are partially inside the right of way and partially outside the right of way in the West Fulton Street Area, the cost to the City for each parcel of said property shall be computed based on the total cost, as defined hereinabove within this paragraph, of said parcel multiplied by the ratio of the land area of said parcel outside the right of way to the total land area of said parcel and then multiplied by thirty-seven and six-tenths percent (37.6%).

(C) NCDOT may bill the City on a monthly basis for reimbursable costs by submitting an invoice in quadruplicate, accompanied by a breakdown of items and supporting documentation as may be required by the City. Said invoices shall be submitted to the City's Finance Officer and shall become due 30 days from receipt by him.

(D) A final itemized invoice listing all reimbursable costs shall be submitted to the City upon completion of all work performed under this paragraph by NCDOT within the Redevelopment Area. Said invoice shall be accompanied by a breakdown of such items and documentation as may be required by the City.

(E) Reimbursement to NCDOT for all invoices submitted shall be made upon approval of each invoice by the City.

(F) NCDOT agrees that it shall bear all costs of any item for which it is unable to substantiate actual costs or any costs which have been deemed unallowable.

(G) NCDOT shall maintain all books, documents, papers, accounting records and such other evidence as may be appropriate to substantiate costs incurred under this agreement. Further, NCDOT shall make such materials available at its office at all reasonable times during the acquisition period and for three (3) years from the date of payment of the final voucher by the City under this agreement, for inspection and audit by the City.

(H) It is agreed that NCDOT and the City shall, without cost to the other, allow any property which it currently owns outside the right of way for Project 8.1414602 and within the Crest Street Community boundaries to be conveyed or utlized for the implementation of the mitigation plan hereinabove incorporated as Attachment 1.

22. If NCDOT cannot acquire through negotiation any parcel of land, any portion of said parcel being located outside the right of way for Project 8.1414602 but within the redevelopment area, NCDOT shall turn over the acquisition of the entire parcel to the City for condemnation proceedings in accordance with its authority under Chapter 40A of the General Statutes and the Urban Redevelopment Law. Upon final settlement of such claim, the City shall bill NCDOT for its reimbursable costs, by submitting an invoice in quadruplicate, accompanied by a breakdown

of items and supporting documentation as may be required by the Department.

23. Upon the sale by the City or NCDOT of any land, improvements or other property acquired by either party located within the Crest Street Urban Renewal Area (Exhibit C), whether such property be from the right of way for the East-West Freeway project, the West Fulton Street Redevelopment Area or the East Fulton Street Area, the parties shall be entitled to receive the sales price, as a credit or reimbursement, as follows: thirty-seven and six-tenths percent (37.6%) thereof to the City, and sixty-two and four-tenths percent (62.4%) thereof to NCDOT.

24. The City shall convey or transfer title to the lots in the West Fulton Street Redevelopment Area which are to be sold to owner-occupant relocatees and tenant-home owner conversion relocatees under paragraph 9 and paragraph 12 of the FINAL MITIGATION PLAN to NCDOT without consideration other than the mutual benefits of this agreement.

25. NCDOT shall acquire all property and relocate all displacees in accordance with the requirements of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, as amended, 42 USC 4601 *et seq.*

26. It is agreed that the provisions of the FINAL MITIGATION PLAN for the Crest Street Community, incorporated hereinabove as Attachment 1, shall be fully binding upon NCDOT and the City.

27. As part of the FINAL MITIGATION PLAN for the Crest Street Community it is necessary that certain

existing dwelling units be moved and rehabilitated and other dwelling units, building and appurtenances be demolished or removed. To accomplish this objective NCDOT and the City agree to the following provisions:

(A) NCDOT and the City shall identify those dwelling units which are suitable for moving and rehabilitating and those dwelling units, buildings and appurtenances which should be demolished or removed.

(B) NCDOT shall prepare all necessary proposals and contracts for the moving, demolition or removal of all dwelling units, buildings, appurtenances or obstructions of any kind or character necessary for the implementation of the mitigation plan.

(C) The demolition, removal or relocation of existing dwelling units, buildings and appurtenances shall be done in accordance with Sections 210, 215 or 220, whichever is applicable, of the N. C. Department of Transportation's Standard Specifications for Roads and Structures which are incorporated herein by reference.

(D) NCDOT shall follow its standard bid procedures and contract administration procedures on all moving and demolition contracts.

(E) NCDOT shall be responsible for insuring that all contractors comply with all the terms of all relocation or demolition contracts.

(F) Upon completion of each demolition or relocation contract, NCDOT shall submit to the City an invoice in quadruplicate stating the City's share of the cost of said relocation or demolition, accompanied by supporting documentation as may be required by the City. Said

invoice shall be submitted to the City's Finance Officer and shall become due 30 days from receipt by him.

(G) Reimbursement to NCDOT for all invoices submitted shall be made upon approval by the City.

(H) The City's share of said relocation and demolition costs shall be one hundred (100) percent for those dwelling units, buildings and appurtenances which are located within the Crest Street Community boundaries east of Fulton Street and wholly outside the right of way designated for Project 8.1414602 and thirty-seven and six-tenths (37.6%) percent for those dwelling units, buildings and appurtenances which are located within the Redevelopment Area west of Fulton Street and wholly outside the right of way designated for Project 8.1414602.

(I) For those dwelling units that are to be rehabilitated pursuant to the City's Community Development Rehabilitation Program (Attachment 1 of FINAL MITIGATION PLAN), and after said units have been relocated in accordance with items A through H hereinabove, the City shall prepare all bid specifications and contracts for said rehabilitation and shall be responsible for the administration of said contracts.

(J) The rehabilitation of said dwelling units shall be done in a timely manner and shall be done in accordance with Attachment 2 of the FINAL MITIGATION PLAN.

(K) The City shall follow its standard bid procedures and contract administration procedures for all rehabilitation contracts.

(L) The City shall be responsible for insuring that all contractors comply with all the terms of all rehabilitation contracts.

(M) NCDOT's share of said rehabilitation cost for those dwelling units which are to be occupied by displacees presently located within the right of way of Project 8.1414602 shall be in accordance with General Statute 133-5 through 133-17 as amended and the Department's rules and regulations.

28. The FINAL MITIGATION PLAN for the Crest Street Community contains provisions for existing homeowners to remain homeowners and for existing tenants, who are eligible, to convert to home ownership. The respective responsibilities of NCDOT and the City are designated in the mitigation plan. It is agreed that NCDOT shall administer all aspects of said provisions for homeownership as part of the acquisition process described in paragraphs 21 through 23 hereinabove.

29. NCDOT will complete Project 8.1414602 in accordance with the plans and specifications to be adopted therefor, or as altered or amended by NCDOT. NCDOT shall have the right to abandon Project 8.1414602 at any time before the City has been called upon to perform any part of its agreement.

30. All exhibits and attachments referred to in this agreement are incorporated herein by reference.

31. The City and NCDOT agree that the agreement for City participation in the costs of right of way for the East-West Expressway embodied in the resolution of the City's City Council adopted June 18, 1962 and concurred in by the State Highway Commission on June 28, 1962 is

modified as and to the extent provided in this agreement and not modified with respect to other segments of said Expressway.

IN WITNESS WHEREOF, this agreement has been executed, in duplicate, the day and year heretofore set out, on the part of NCDOT and the City by authority duly given, as evidenced by the attached certified copy of resolution, ordinance or charter provision, as the case may be.

L.S.

ATTEST:	CITY OF DURHAM
s/ Margaret M. Bowers Clerk	s/ By: Barry L. Del Castilho City Manager

L. S.

ATTEST:	DEPARTMENT OF TRANSPORTATION
s/ Brenda Grady SECRETARY TO THE BOARD	s/ By: Billy Rose STATE HIGHWAY ADMINISTRATOR APPROVED RUFUS L. EDMISTEN ATTORNEY GENERAL s/ By: James B. Richmond ASSISTANT ATTORNEY GENERAL

SUBJECT: EAST/WEST EXPRESSWAY MUNICIPAL AGREEMENT AND FINAL CREST STREET MITIGATION PLAN

Motion by Council Member Pledger seconded by Council Member Kerckhoff to authorize the City Manager to execute the Municipal Agreement between the City and the North Carolina Department of Transportation for the construction of the East-West Expressway between Erwin

Road and U. S. Highway 15-501 and the relocation of the Crest Street Community was approved by the following vote: Ayes: Mayor Markham and Council Members Griffin, Campbell, Davis, Jenkins, Hunt, Kerckhoff, Pledger, West, Sloan and Vick. Noes: None. Excused Absence: Council Member Poole. Absent: Council Member Smith.

Motion by Council Member Pledger seconded by Council Member Kerckhoff to authorize the City Manager to execute the Final Mitigation Plan (which is incorporated into the Municipal Agreement) between the City, the North Carolina Department of Transportation and the Crest Street Community Council to relocate the Crest Street Community as a community was approved by the following vote: Ayes: Mayor Markham and Council Members Griffin, Campbell, Davis, Jenkins, Hunt, Kerckhoff, Pledger, West, Sloan and Vick. Noes: None. Excused Absence: Council Member Poole. Absent: Council Member Smith.

NORTH CAROLINA
DURHAM COUNTY

I, Margaret M. Bowers, duly appointed City Clerk of the City of Durham, do hereby certify that the above is a true and accurate copy of the action taken by the Durham City Council at the November 15, 1982 Durham City Council Meeting, and is on file in the City Clerk's Office at City Hall.

WITNESS my hand and the corporate seal of the City of Durham, this 13th day of December, 1982.

s/ Margaret M. Bowers
City Clerk

(Corporate Seal affixed)

(Maps and drawings attached as exhibits omitted in printing)

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA
DURHAM DIVISION

NO. C-352-D-72

ECOS, INC.; DREW DIEHL; ASSOCIATED STUDENTS OF DUKE UNIVERSITY; STEVE SCHEWEL and HENRY BECK, Members of Associated Students of Duke University; and JOHN ROBERTSON,

Plaintiffs

CREST STREET COMMUNITY COUNCIL, INC. and WILLIE PATTERSON,

Applicants for Intervention

v.

CLAUDE S. BRINEGAR, Secretary of United States Department of Transportation; T. J. MORAWSKI, Division Engineer, Federal Highway Administration; McLAUCHLIN D. FAIRCLOTH, Commissioner, North Carolina State Highway Commission; W. F. CADDELL, JR., Planning and Research Engineer, North Carolina State Highway Commission; and NELLO TEER COMPANY, A Corporation,

Defendants.

CONSENT JUDGMENT

(Filed 14 December 1982)

1. Plaintiffs brought this action on December 18, 1971, seeking an injunction prohibiting further construction of the East-West Expressway in Durham, North Carolina, on grounds of alleged violations of the requirements for a public hearing under 23 U.S.C. § 128, as amended, of alleged failure to comply with Section 4(f) of the Depart-

ment of Transportation Act of 1966, 49 U.S.C. § 1653(f), and Section 138 of the Federal-Aid to Highway Act of 1968, 23 U.S.C. § 138 with respect to the use of lands protected thereunder, and of alleged failure to comply with Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(a)(C).

2. The Durham East-West Expressway, if completed as proposed, will be a multi-lane controlled access highway which will extend from an interchange with existing Interstate 85 west of Durham easterly and southerly through the City to an interchange with the North-South Expressway and then northerly by way of the U.S.-70 Connector to an interchange with existing U. S. Highway 70 east of Durham, a total distance of 9.2 miles.

3. At the time of the institution of this action, a section of the expressway 1.7 miles in length lying between Chapel Hill Street and Alston Avenue had been completed and was open to traffic; another section 1.9 miles in length, lying between Alston Avenue and the North-South Expressway was under construction and almost complete; and another section 0.8 miles in length, lying between Chapel Hill Street and Erwin Road, was under construction by the defendant Nello L. Teer Company pursuant to a contract executed October 10, 1972.

4. On February 20, 1973, following a hearing on plaintiffs' motion for a preliminary injunction, the court denied relief as to the 0.8 mile section under construction but restrained and enjoined the defendants from taking any steps leading towards construction of the segment lying between Erwin Road and the interchange at I-85 until compliance in full with the statutes alleged to have been violated and implementing regulations.

5. On November 8, 1973, the plaintiffs and the defendants, by consent judgment, settled their controversy as to the 0.8 mile segment under construction.

6. The North Carolina Department of Transportation, with federal assistance, now intends to construct a section of the expressway lying between Erwin Road and U. S. Highway 15-501.

7. The State defendants have filed a motion seeking dissolution of the injunction and dismissal of the action. The attorneys for the plaintiffs have filed responses to the State defendants' motion for dissolution of the injunction. Crest Street Community Council, Inc. and Willie Patterson, applicants for intervention, have filed a motion for intervention as plaintiffs in the action either as of right pursuant to Rule 24(a)(2) or by permission pursuant to Rule 24(b)(2).

8. The State defendants and the applicants for intervention have resolved the things and matters in controversy between them by agreement adopted by the North Carolina Board of Transportation on November 19, 1982. The plaintiffs and the applicants for intervention do not or no longer oppose the State defendants' motion to dissolve the injunction and do not wish to prosecute this action any further except that the applicants for intervention explicitly reserve the right to pursue all claims in their application for intervention in the event said agreement is not fully implemented, and in addition, reserve their claim for attorney fees against the State defendants and the North Carolina Department of Transportation and the plaintiffs reserve their right to pursue all claims relating

to the section of the expressway proposed to be constructed between U.S. Highway 15-501 and Interstate 85.

NOW, THEREFORE, without further proceedings, and upon consent of the parties, it is hereby ORDERED, ADJUDGED and DECREED:

1. That the injunction presently in force in this action is dissolved and is of no further force or effect;

2. All claims in this action are dismissed, and this dismissal is with prejudice for all claims except those explicitly reserved in Paragraph Eight above by applicants for intervention and plaintiffs.

3. That the plaintiffs and the defendants shall bear their own costs, including their own attorney fees.

This the 14th day of December, 1982.

s/ EUGENE A. GORDON
UNITED STATES DISTRICT COURT JUDGE

WE CONSENT:

SMITH, PATTERSON, FOLLIN, CURTIS, JAMES & HARKAVY

s/ By MICHAEL K. CURTIS
Attorney for Plaintiffs

s/ By WILBUR P. GULLEY
Attorney for Plaintiff Steve Schewel

NORTH CENTRAL LEGAL ASSISTANCE PROGRAM

s/ By MICHAEL D. CALHOUN
Attorney for Applicants for Intervention

RUFUS L. EDMISTEN
Attorney General

s/ By JAMES B. RICHMOND
Special Deputy Attorney General
Attorney for State Defendants

s/ By BENJAMIN H. WHITE, JR.
Assistant United States Attorney
Attorney for the Federal Defendants

s/ By R. ROY MITCHELL, JR.
Attorney for the Defendant Nello Teer Company

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

File No. C-83-1239-D

(Parties omitted in printing)

DEFENDANTS' MOTION TO DISMISS THE ACTION

(Filed 8 August 1984)

The defendants North Carolina Department of Transportation, North Carolina Board of Transportation and William R. Roberson, as Secretary of the North Carolina Department of Transportation and Chairman of the North Carolina Board of Transportation, by and through their attorney, respectfully move the Court pursuant to Rules 12(b) and 12(c) of the Rules of Civil Procedure for an order dismissing this action on the following grounds:

(1) The Court lacks jurisdiction over the subject matter of the action and over the person of the defendants.

(2) In essence this is an action against the State of North Carolina, which has not consented to suit nor otherwise waived its sovereign immunity or its immunity from suit under the Eleventh Amendment to the Constitution of the United States.

(3) The Complaint fails to state a claim upon which relief can be granted.

(4) The plaintiffs lack standing to bring and maintain this action.

(5) The plaintiffs have failed to pursue and exhaust their administrative remedies.

The grounds for this motion are more fully set forth in the defendants' accompanying brief.

This the 8th day of August, 1984.

RUFUS L. EDMISTEN
Attorney General

s/ JAMES B. RICHMOND
Special Deputy Attorney General
N. C. Department of Justice
Raleigh, North Carolina
Attorney for Defendants

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

C-83-1239-D

(Parties omitted in printing)

JUDGMENT

(Filed 29 November 1984)

This matter came before the Court for ruling on defendants' Motion to Dismiss for failure to state a claim and for judgment on the pleadings and on plaintiffs' Motion for Summary Judgment. Because matters outside the pleadings were presented and not excluded, the Court treated defendants' motion as one for summary judgment in accordance with Fed.R.Civ.P. 12(b)(6) & (c). In a Memorandum Opinion and Order, filed contemporaneously herewith, the Court granted defendants' motion and denied plaintiffs' motion.

IT IS, THEREFORE, ORDERED and ADJUDGED that this action be, and the same hereby is, DISMISSED.

s/ HIRAM H. WARD
United States District Judge

November 29, 1984.